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**Final**

**ENVIRONMENTAL IMPACT**

**STATEMENT**

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**KALISPELL MALL**

**SHOPPING CENTER**

**May 1980**

**Lead Agency:**  
**Montana State**  
**Department of Highways**

Montana State Library



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FINAL  
ENVIRONMENTAL IMPACT STATEMENT  
  
for  
  
KALISPELL MALL SHOPPING CENTER  
  
Kalispell, Montana

Lead Agency:  
MONTANA STATE DEPARTMENT OF HIGHWAYS

Sponsored by:  
DEVELOPERS DIVERSIFIED

May 29, 1980

Prepared by:  
HAWORTH AND ANDERSON, INC.  
West 621 Mallon Avenue  
Spokane, Washington  
99201

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The Wilderness Society, 4260 East Evans Avenue, Denver, CO 80222  
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U.S. Department of Transportation, Federal Highway Administration, 301 S. Park Street, Federal Office Building, Drawer 10056, Helena, MT 59601  
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West Valley Fire Department, Flathead County, Kalispell, MT 59901  
John Heberling, 745 S. Main, Kalispell, MT 59901





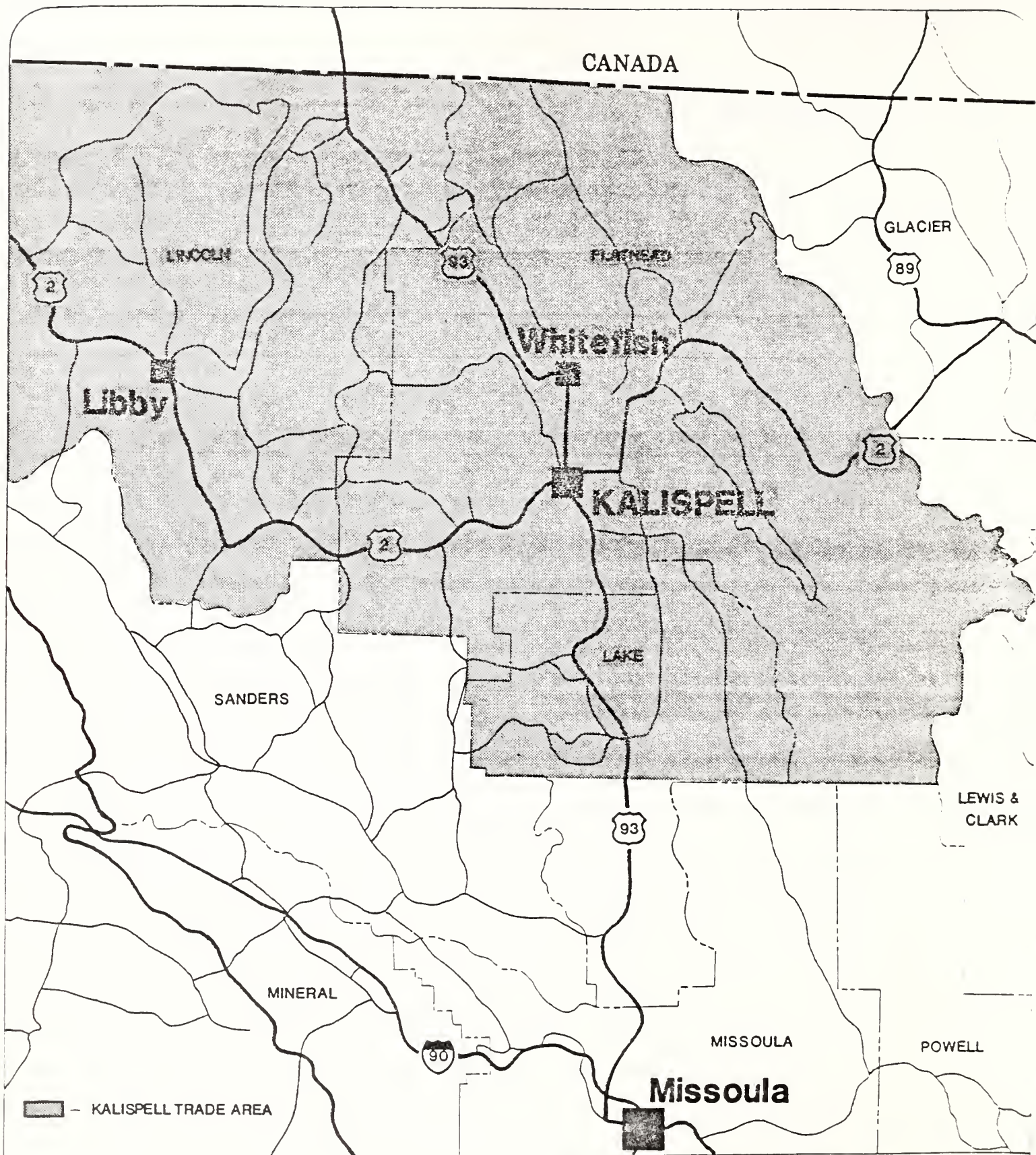
## I. DESCRIPTION

The proposal under review is a request for driveway approach permits required for the development of a proposed regional shopping center to be located in the Buffalo Hill area north of Kalispell. The proposed approaches will allow access onto U.S. Highway 93. The following final environmental impact statement (FEIS) concerns a traffic approach permit to be issued pursuant to Title 60, Chapter 2, Part 2, MCA, entitled "Department of Highways - Powers and Duties".

The project sponsor, Developers Diversified, of Cleveland, Ohio, proposes to build the Kalispell Mall shopping center just north of the Kalispell city limits and east of U.S. Highway 93 in Flathead County. The site is a 52-acre parcel of land which is an assemblage of two tracts of land. (See the maps on the following pages.)

Of the total 52-acre site, 38 acres would be developed. The remaining 14 acres would be set aside for buffer zone, utility development, slope transition and possible future development. There are three proposed access points to U.S. Highway 93. From south to north, the first access point would be where North Meridian Road intersects U.S. Highway 93; the second at North Ridge Drive; and the third at the northwest corner of the site. Another access point south to Sunnyview Lane also has been planned. The on-site traffic will be regulated by a ring road as indicated on the site plan.

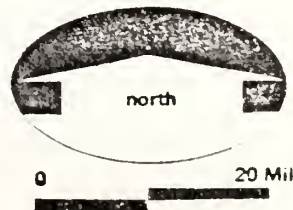
The predominant land use surrounding the site is mixed residential with a larger number of single family units. Some offices and commercial businesses are located in the immediate area. Also, the Pacific Power Company, the Kalispell Regional Hospital, professional medical buildings, churches, and the Kalispell Junior High School are located in the Buffalo Hill area near the site.



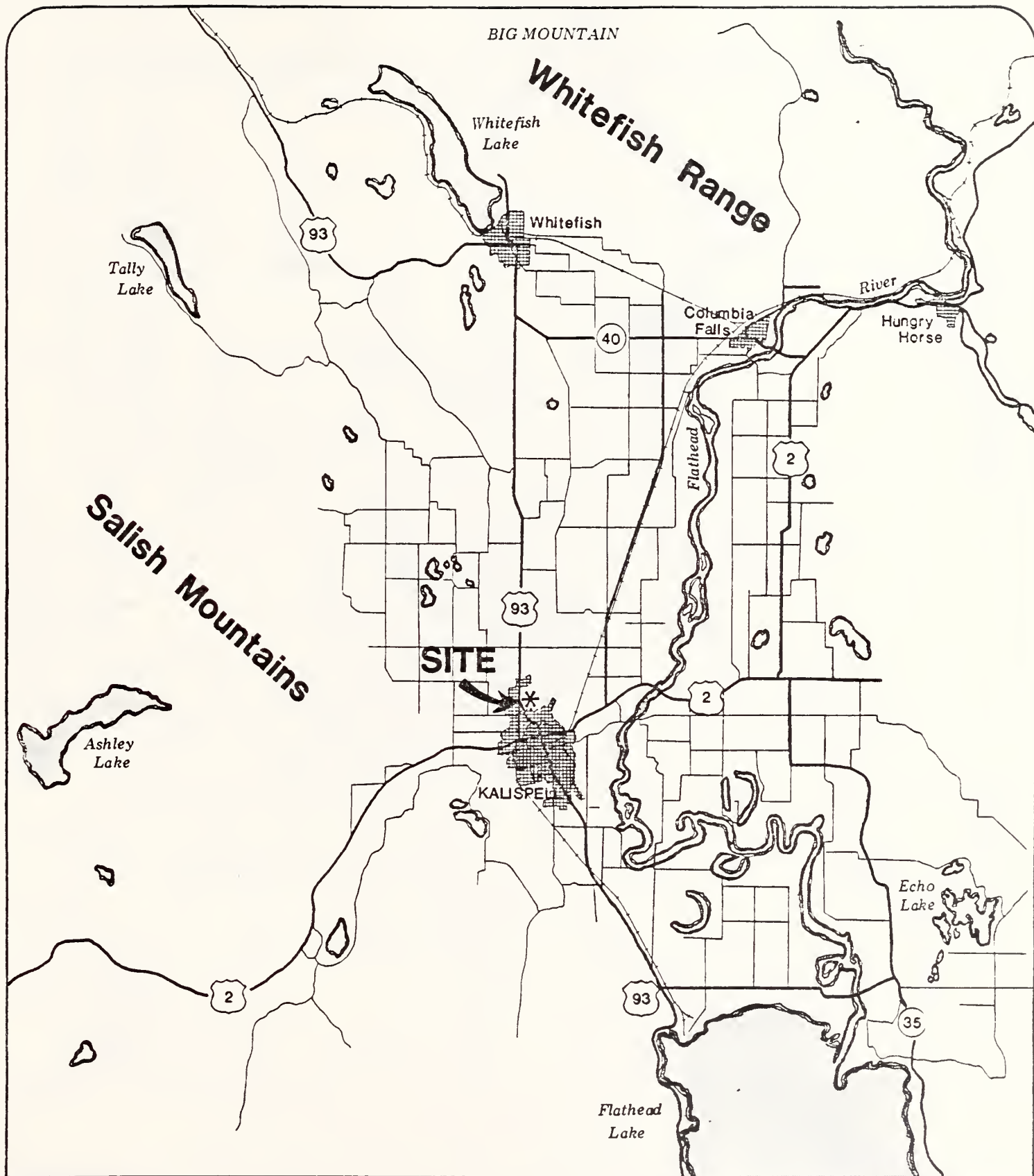
## VICINITY MAP



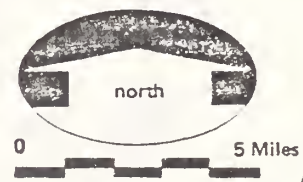
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Consultants in environmental policy, planning, economics





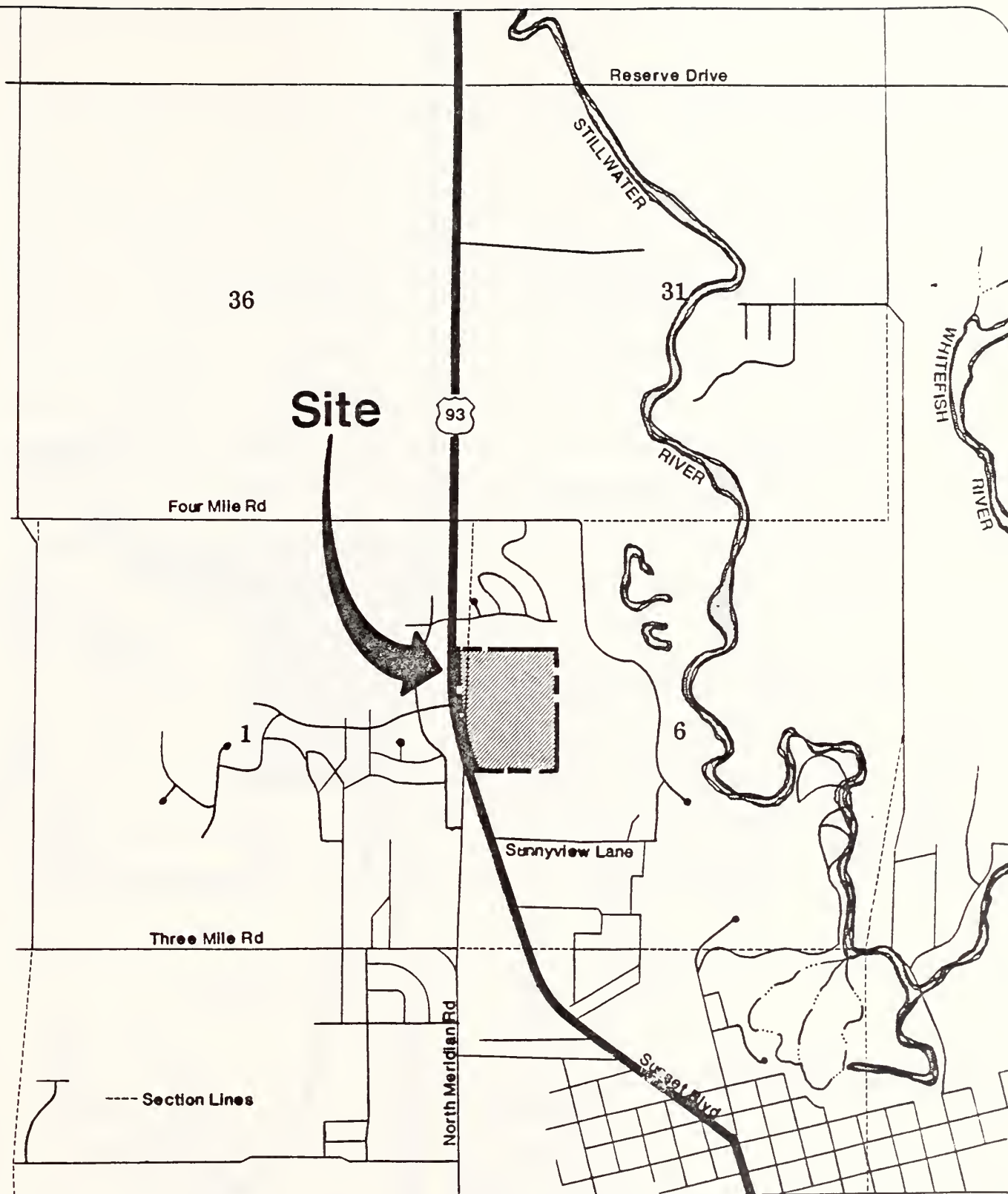


# AREA MAP

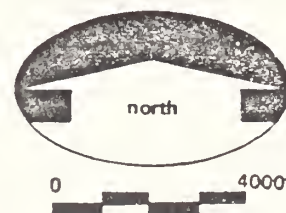


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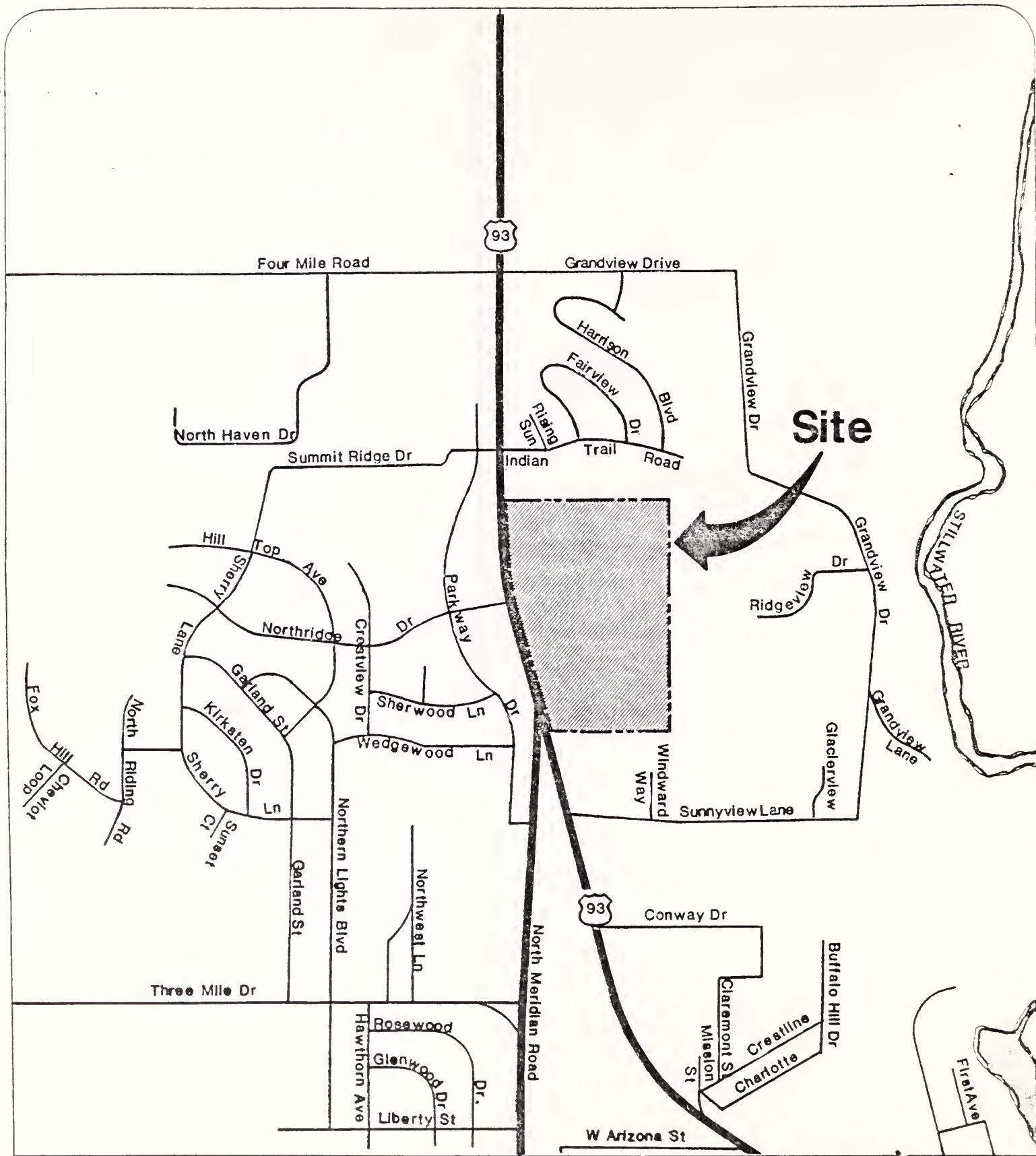


## BUFFALO HILL AREA



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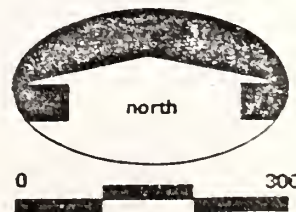




## IMMEDIATE VICINITY



HARBORTH & ANDERSON, INC.  
Consultants in environmental analysis, planning, economics



The site is in Flathead County within the joint Kalispell city-county planning area. A general comprehensive plan for the area was adopted in 1974 and designated this area for relatively high-density future residential growth. A zoning resolution was recently adopted by the Board of County Commissioners proposing to change the site from an unclassified zone to a B-4 Commercial zone allowing for community shopping center use. This action was the subject of a lawsuit brought before the District Court in Flathead County. The Court held that the action by the Commissioners was illegal and not in conformance with the comprehensive plan. In addition, the Court enjoined the City of Kalispell from issuing a building permit. The decision of the Court has been appealed to the Montana Supreme Court and the matter is now pending.

A copy of the Findings of Fact, Conclusions of Law and Judgement that were recently handed down by the Eleventh Judicial Court is included as Appendix A. The Montana Department of Highways takes no position with regard to the suit. The function of the EIS process is to present as much information as possible and to assimilate the comments on the EIS.

## II. REFERENCED MATERIAL

The Department of Highways herewith references all materials in the Draft EIS (DEIS). It should be noted that since the DEIS was published the District Court in Flathead County has enjoined the County from zoning the proposed shopping center site to a B-4 zone which would allow shopping center use. In addition, the court enjoined the City of Kalispell from issuing a building permit. The court action has been appealed to the Montana Supreme Court and the matter is pending.

Some minor technical changes to the draft document are included in Section IV of this FEIS as well as additional comments on transportation designed to clarify traffic analysis issues which, along with the court's decision, accounted for most of the substantive comments on the DEIS.



### III. SUMMARY OF MAJOR CONCLUSIONS AND SUPPORTING INFORMATION

The Department of Highways recommends the approval of a driveway approach permit containing objectives substantially similar to those included in Traffic Alternative No. 4, as illustrated in Chapter IV of the DEIS. Depending upon final design parameters, there may be some alterations to Alternative 4 but they would not be expected to be significant.

Final approval of the approach permit will be contingent upon the completion of acceptable design and construction details with respect to drainage, traffic control devices, acceleration and deceleration lanes, specific access points, and road approaches leading to the access points, particularly the Meridian Road/Highway 93 intersection. Consideration also must be given to any improvements that may be necessary at the intersection of U. S. Highway 93 and Idaho Street.

The sponsors of the Kalispell Mall project will be expected to fund the design, installation and construction of all improvements and traffic control devices that are specifically attributable to increased traffic levels generated by the proposed shopping center.

#### IV. ADDITIONAL INFORMATION

##### A. Transportation Impacts

Because of concerns that have arisen since the publishing of the DEIS (February 1980), there are some items concerning the traffic impact of the proposed Kalispell Mall which need further elaboration. These are: (1) the impact on the Sunnyview medical facilities, and the intersections of U.S. 93 with Sunnyview Lane and Conway Drive; and (2) the impact if the Grandview/Evergreen link is not constructed. These points are discussed below.

##### 1. Sunnyview/Conway Intersections

As mentioned on page 126 of the DEIS, in sections b, c, and d, the increased traffic from the Mall will have unavoidable adverse impact on the roadways serving the medical facilities. This means longer delays into and out of the hospital, etc., complexes.

It is recommended that the road geometrics be improved at these intersections by adding acceleration/deceleration lanes, and left-turn storage lanes. This recommendation is made, not only because of the added Mall traffic on Highway 93, but also because it will improve the convenience and safety of all drivers using these intersections.

It is expected that whenever the planning for the Sunnyview/Conway improvements begins that more detailed assessments will be made, in order to determine further requirements regarding road and signalization needs at these intersections.

It should be noted that improvements will be required at many locations on Highway 93 in the future, whether or not the Mall is built. Any further development on the Mall site and in other areas tributary to the highway, will increase traffic on Highway 93. The map on page 148 of the DEIS

presented a functional design for Highway 93 adjacent to the Mall, that would improve traffic operations to meet increased traffic demands, however those demands were created.

## 2. Grandview/Evergreen Link

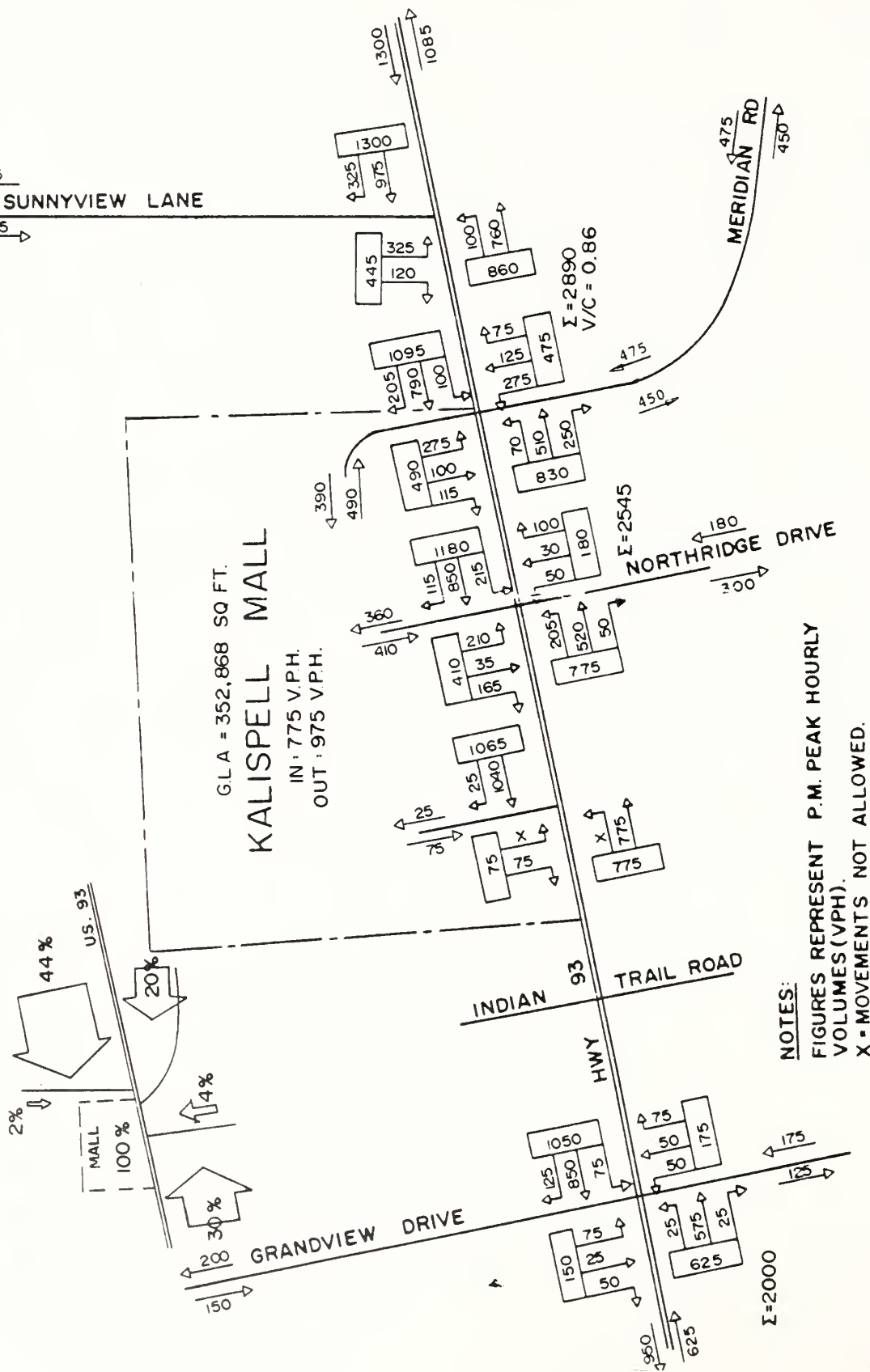
It is appreciated that this link seems difficult to realize in the near future. However, from the point of view of long-term planning, it is not unreasonable to assume that this road link will ultimately be constructed. If it is not realized, there would be some difference in the traffic patterns. The shopper distribution shown on page 41 of the DEIS would shift to a heavier southerly weight, as shown on the insert on the following page. This would mean that most of the shopper traffic to and from the Evergreen area would have to drive south through the downtown area to reach their destination.

This shift would represent about 10 percent of the shopper traffic or almost 200 vehicles per hour (VPH), in addition to the previously calculated 450 VPH (page 47 of the DEIS) adding a total of 650 VPH to the downtown area. In terms of 1990 traffic conditions, this would represent a v/c ratio (volume to capacity ratio) of 1.40, or a 40 percent overload of the Main/Idaho intersection.

Assuming improved lane arrangements by installing a double left-turn from Idaho westbound, to Main southbound, and a double right-turn from Main northbound to Idaho eastbound, the v/c ratio would lower to 1.31, still representing congested conditions.

Further intersection improvements would require widening the road, with the associated acquisition of right of way. Traffic at the intersections of Sunnyview Lane and Conway Drive with U.S. 93 would undergo

# PEAK HOUR SHOPPER DISTRIBUTION



1990 COMBINED TRAFFIC (P.M. PEAK HOUR)

WITHOUT GRANDVIEW - EVERGREEN LINK

further delay, in addition to that outlined in the previous section. Therefore, if the traffic mitigating measures proposed in the DEIS are not implemented, the increase in traffic volume generated by the proposed project should be considered as significant adverse impacts (page 49 of the DEIS).

The share of cost that the developers should be expected to pay to implement these improvements is a decision to be made by the Department of Highways. One possible formula could be negotiated, according to the percentage of traffic that the shopping center generates on a section of road. For example, if the Mall traffic represents 40 percent of the traffic on Meridian Road, then the cost of improvements would be paid accordingly.

#### B. Technical Changes in the Draft EIS

The following changes in the DEIS are listed by page number for reference. In addition, some minor corrections have been made in the zoning map. A copy of the updated map is included on the following page.

KALISPELL EIS

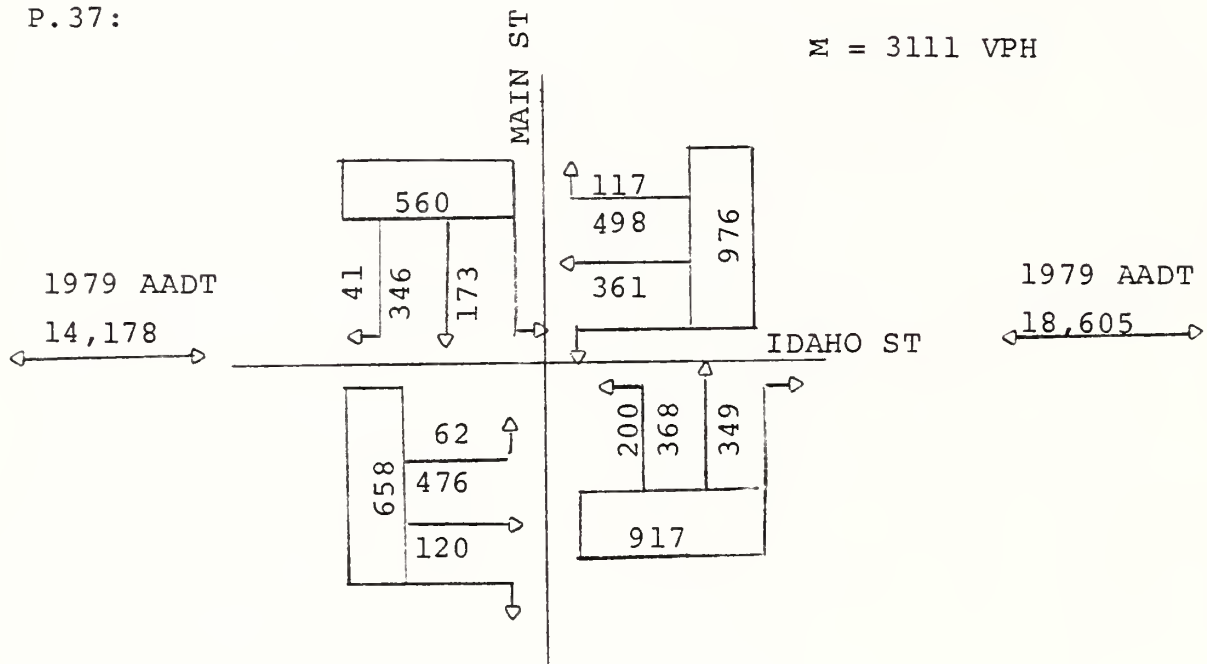
REVIEW OF DRAFT REPORT

ERRATA

P.15: Last line,  
3rd Para:  
Replace  
"Drive" with  
"Road".

1978 AADT  
10,253

P.37:



(The figures shown in the Draft EIS were actually noon peak traffic volumes, not PM peak traffic).

Alternatively, the abbreviation "PM PEAK" could be replaced with the word "NOON".

P.40: formula  $\frac{P/d^2}{\sum(P/d^2)}$  (summation sign ( $\Sigma$ ) should be in the denominator).

P.46: Volumes on Northridge Drive: E/B = 180  
W/B = 300 (missing)

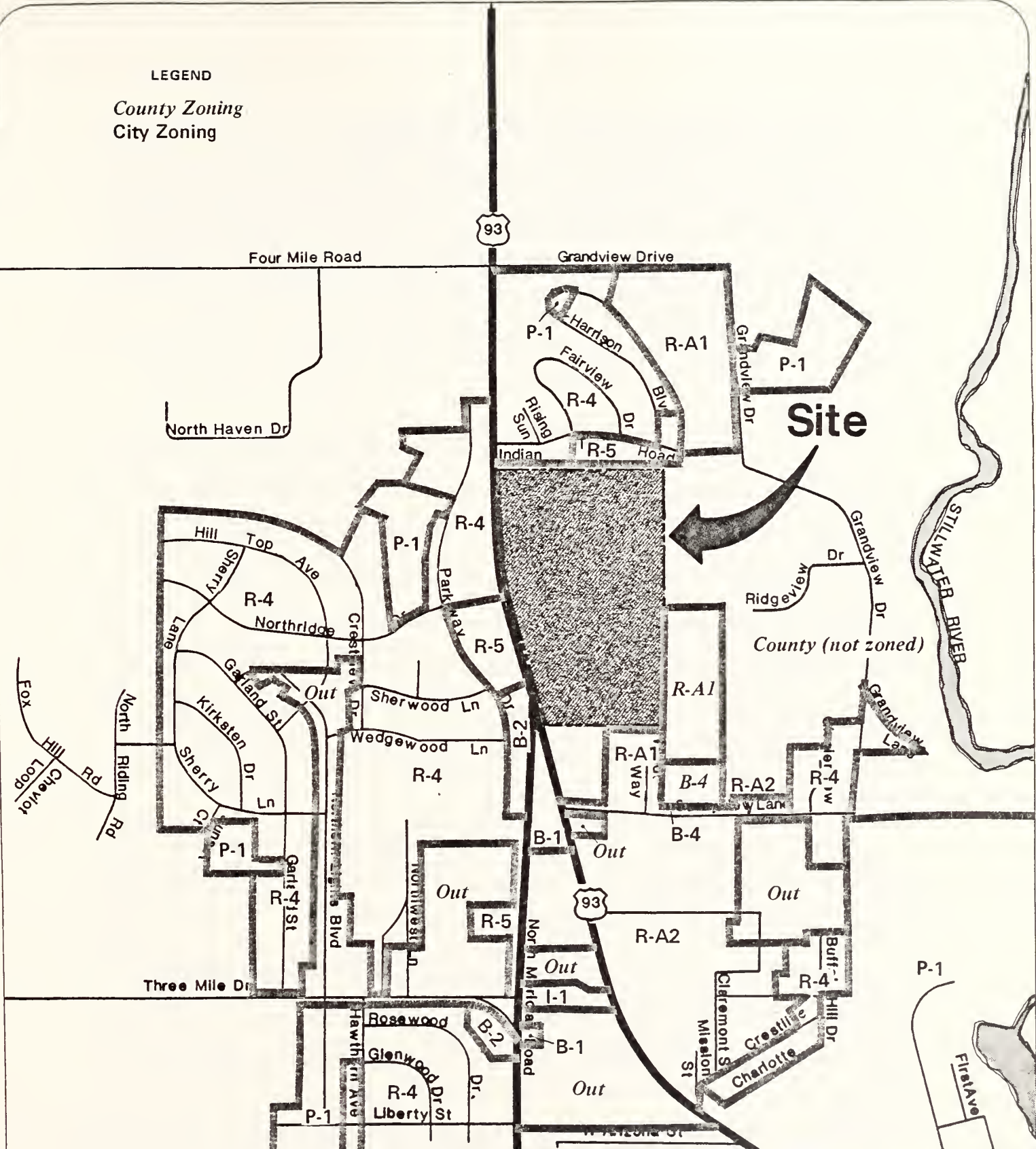
P.47: 3rd Line, 5th Para: replace "land" with "lane".

P.77: 3rd Para: replace "western" with "eastern".



LEGEND

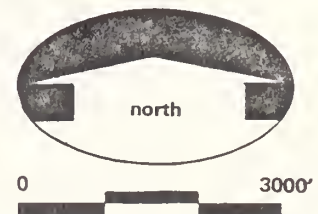
County Zoning  
City Zoning



# ZONING MAP



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## V. ALTERNATIVE ACTIONS AVAILABLE TO THE DEPARTMENT

The purpose of this section is to identify those alternative actions which are available to the Highway Department within its responsibilities for acting upon access permits. The alternatives available to the Department are: (1) it can deny the permit; (2) it can grant the permit based on the design of the sponsor; or (3) it can approve an alternative access design.

Denial of the permit presumably would mean that the sponsor would have to consider an alternative location for the proposed shopping center or drop the project entirely. If the sponsor's proposed design is accepted, it would be assumed that the project can proceed at least with respect to development of the approved access points. The question of how cost is to be apportioned in relation to any proposed off-site improvements would be subject to negotiation between the Department and the sponsor. It would be assumed that off-site capital improvement costs directly attributable to the project would be borne by the sponsor.

The following analysis addresses several alternative suggestions for changes to the project sponsor's design as well as several alternatives related to the Meridian Road alignment.

As a general guideline, shopping center accesses with full turning movements should be spaced a minimum of 500 to 600 feet apart. The internal access roads should preferably be 200 feet long to prevent backups onto the highway.

The access at Northridge Drive is adequately located, from the point of view of traffic handling and dispersion. The north access is, however, too close to Indian Trail Road, if it were to have full turning movements. Also,



there will be a residential access (Summit Ridge Drive) aligned with Indian Trail Road. This access will need left-turn storage for northbound to northwest-bound vehicles. Therefore, there is not enough room to allow southbound to eastbound left turns into the mall site. For this reason, it is recommended that the north access be restricted to only right-in/right-out movements and that it be a minimum of 300 feet south of the Indian Trail Road alignment.

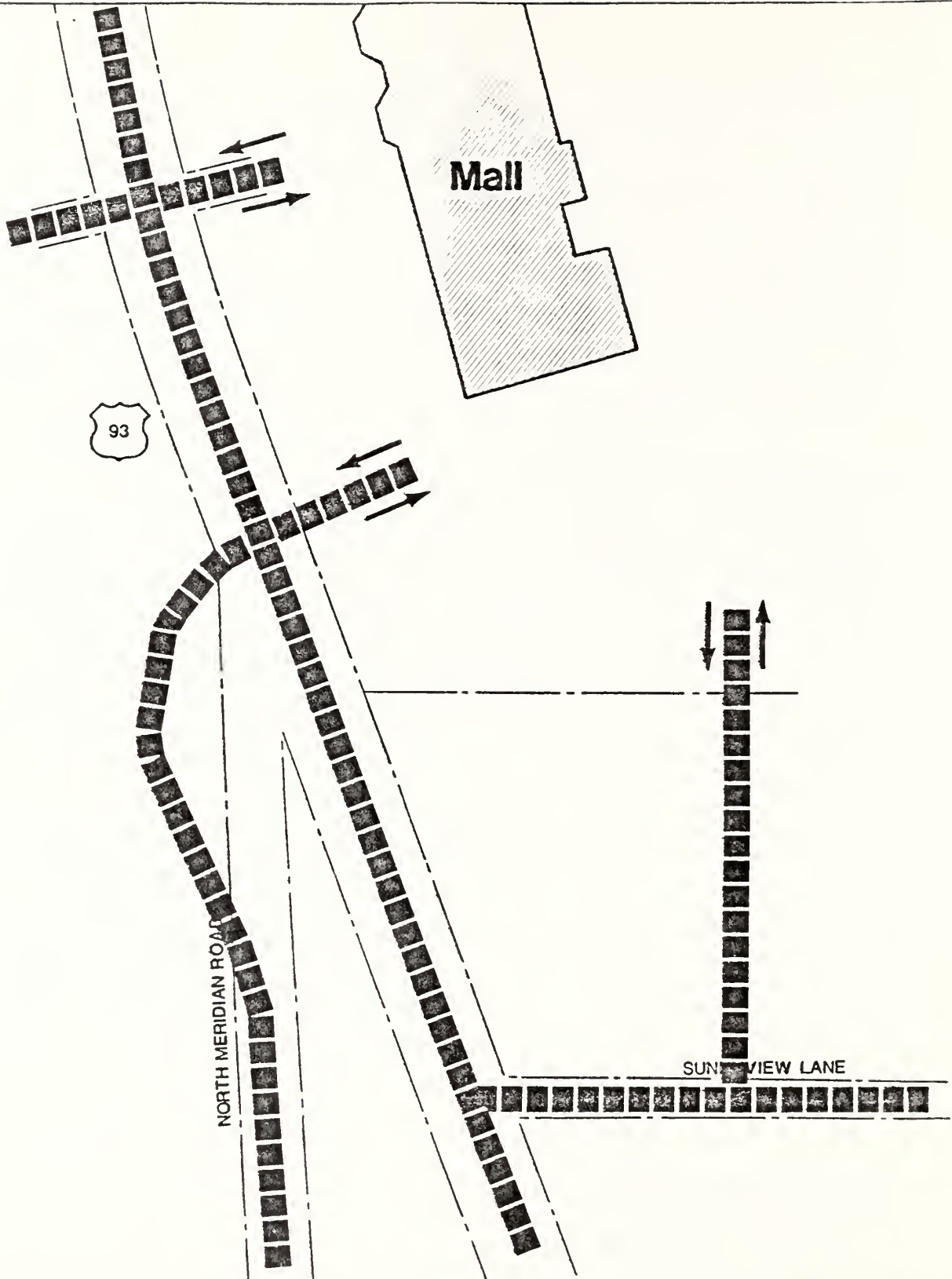
The access on Meridian Road has several alternative variations which may affect Sunnyview Lane and the south access to Sunnyview Lane.

The map on the following page shows Alternative 1, which is basically the same as originally proposed by the developer. The traffic assignment diagram on page 43 of the DEIS shows that the south access to Sunnyview Lane would be used only by a small percentage of shopping traffic (65 inbound and 100 outbound). The conclusion is that the shopping center does not need this south access to Sunnyview Lane.

A scheme without the south access to Sunnyview Lane is shown as Alternative 2 on page 19. In this scheme the shopping traffic would shift to the intersection at Meridian Road and not use Sunnyview Lane at all. Thus, the hospital and related traffic would be physically separated from shopping center traffic. There would still be capacity in the Meridian Road intersection to handle the center's additional traffic.

Alternative 3, shown on page 20 illustrates a potential realignment of Meridian Road to intersect U. S. Highway 93 at Sunnyview Lane. Although this alternative would create a busy intersection at Sunnyview Lane, it would have the advantage of eliminating one intersection on U. S. Highway 93. Therefore, there would be one less conflict point.

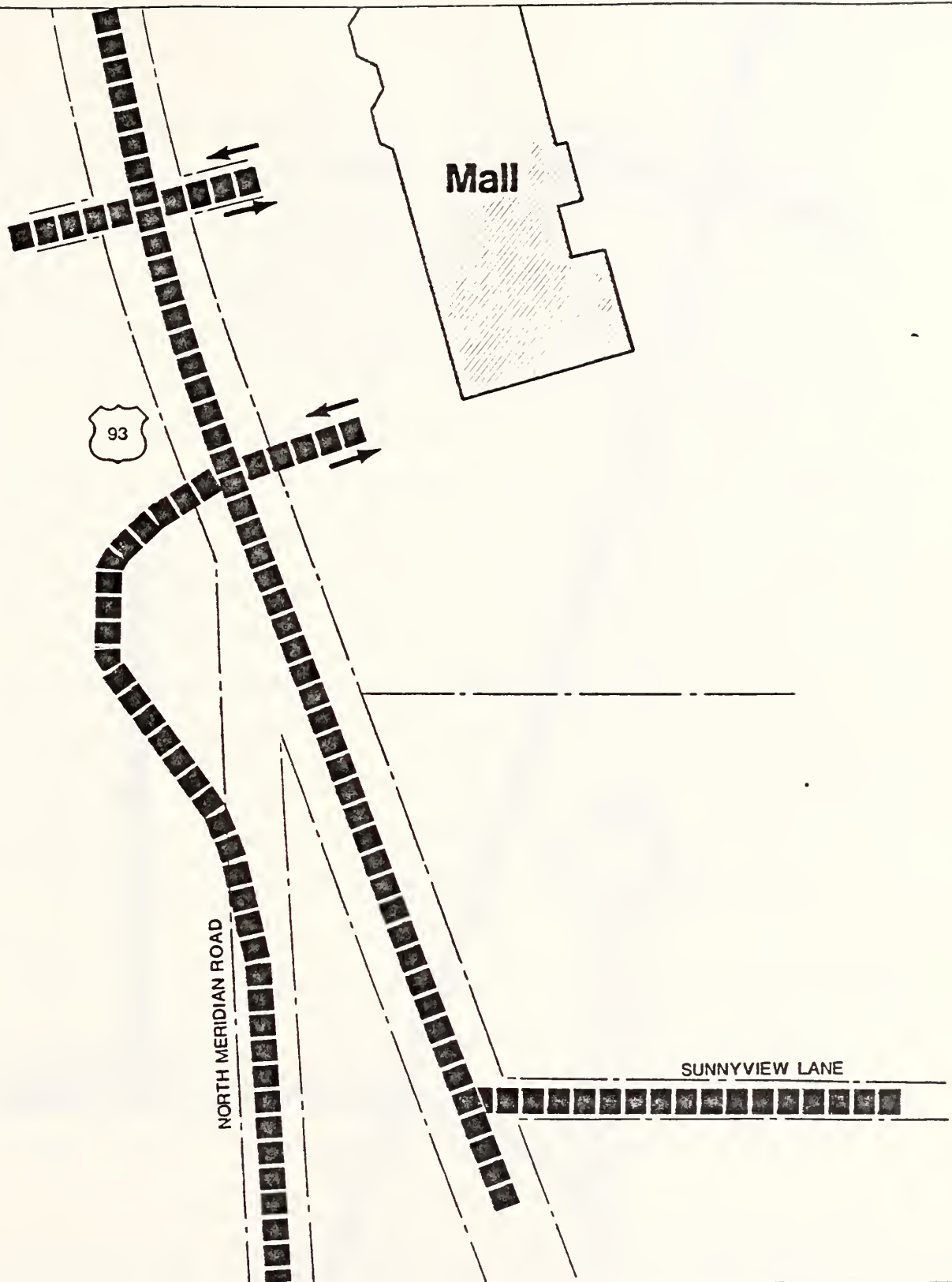
A disadvantage of Alternative 3 is that there would be nearly 900 (inbound and outbound) shopper traffic vehicles per hour on Sunnyview Lane,



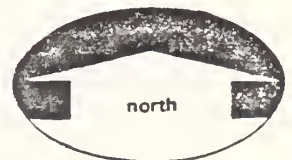
## TRAFFIC ALTERNATIVE ONE



not to scale



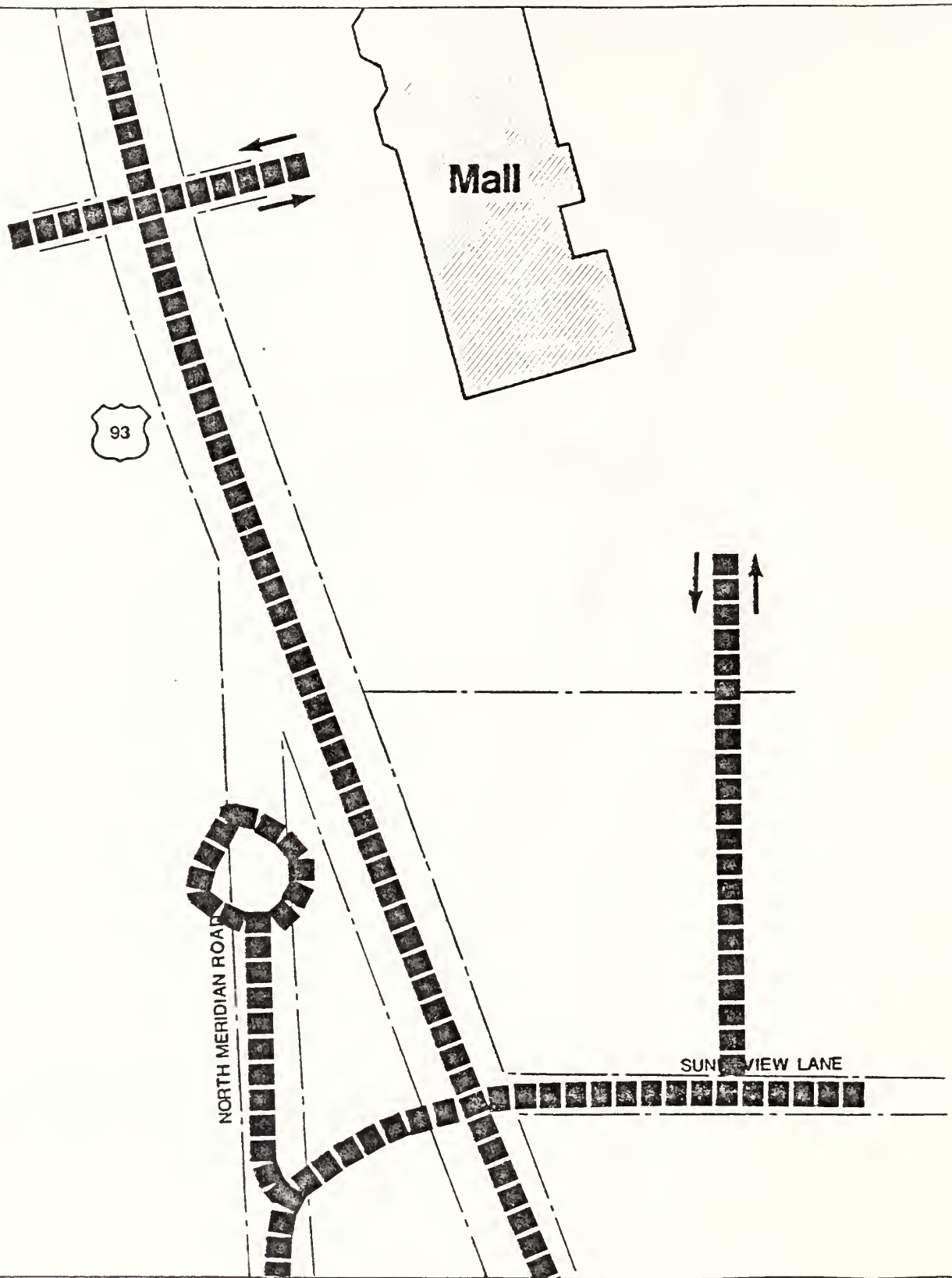
## TRAFFIC ALTERNATIVE TWO



not to scale



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## TRAFFIC ALTERNATIVE THREE



not to scale



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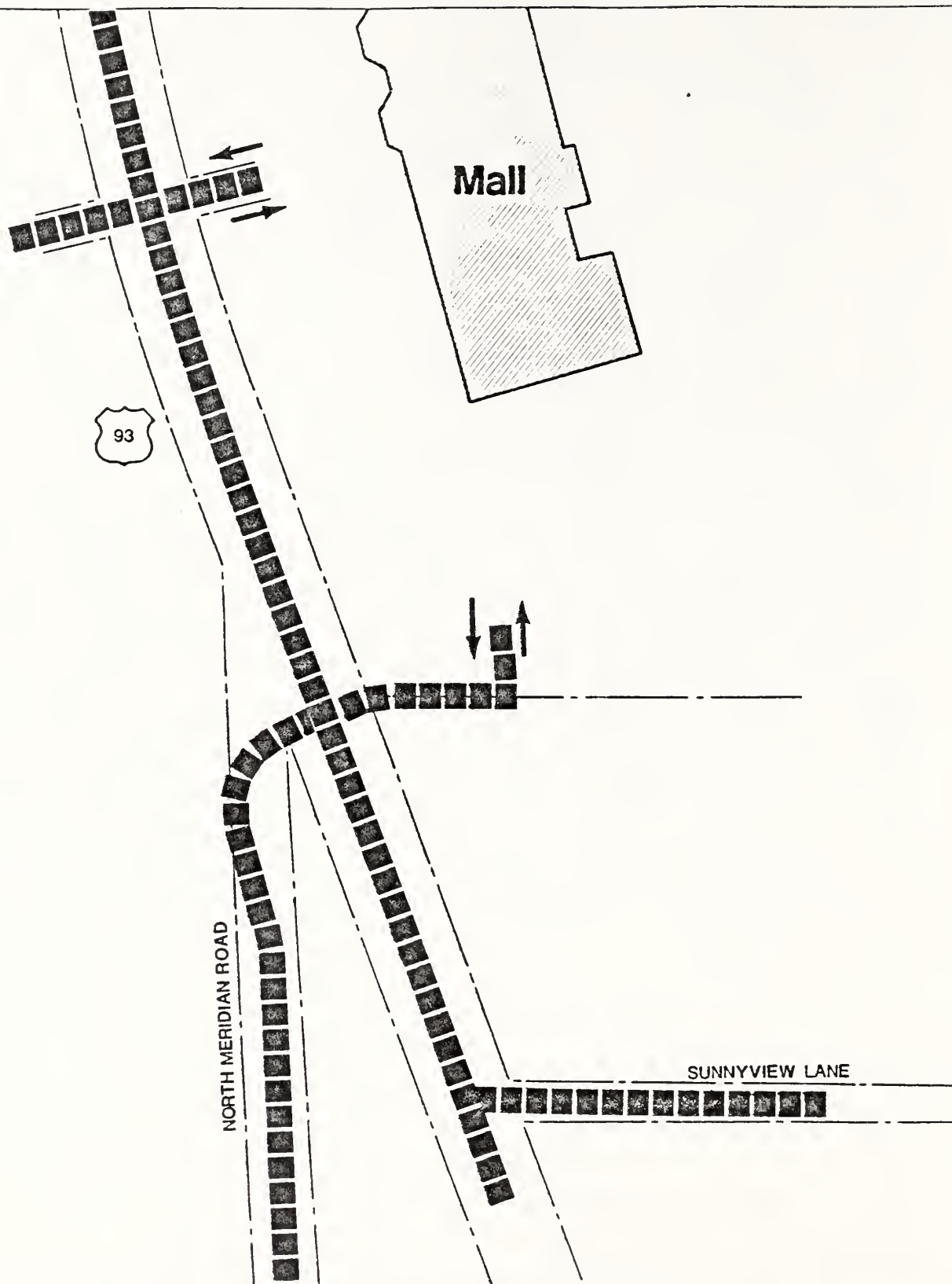


which could possibly disrupt access of emergency vehicles to the hospital. Under this alternative, Sunnyview Lane would have to be widened between U. S. Highway 93 and the shopping center access. There is also a physical disadvantage to Alternative 3. The existing difference in elevation between Meridian Road and Sunnyview Lane is such that it would require a 10 percent gradient to achieve this link. This would be considered excessively steep under the Montana Department of Highways design standards.

Alternative 4, shown on the following page, is similar to Alternative 2, except that the Meridian Road intersection is shifted to the south property boundary of the site. One potential purpose for this alignment is to allow flexibility regarding future access to the parcel between this boundary and Sunnyview Lane. If, for example, this parcel is occupied in the future by medical-related establishments, or offices, there could be a local access from Sunnyview Lane. If, however, there is future commercial development on this parcel, access would probably be from the north, i.e., from the Meridian Road extension, without direct internal connection to Sunnyview Lane.

Another advantage of Alternative 4 is that it would allow for a future extension of the road along the property boundaries, with a possible connection to the east (e.g., to Ridgeview) for local service. An access to the east, linking the northeast of the site to the bend in Grandview Drive, could also be desirable in the future.

The map on page 23 illustrates the projected traffic volumes related to Alternative 4. The total projected intersection volume of the Meridian Road/U. S. Highway 93 intersection is 2,860 vehicles per hour and the calculated volume-to-capacity ratio is 0.84. This represents Level of Service "D" conditions. Level of Service D describes a condition approaching



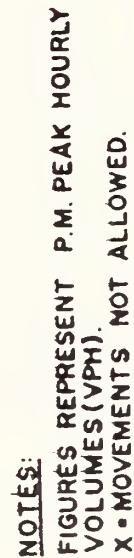
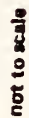
## TRAFFIC ALTERNATIVE FOUR



not to scale



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**1990 COMBINED TRAFFIC (P.M. PEAK HOUR)  
ALTERNATIVE FOUR NETWORK**

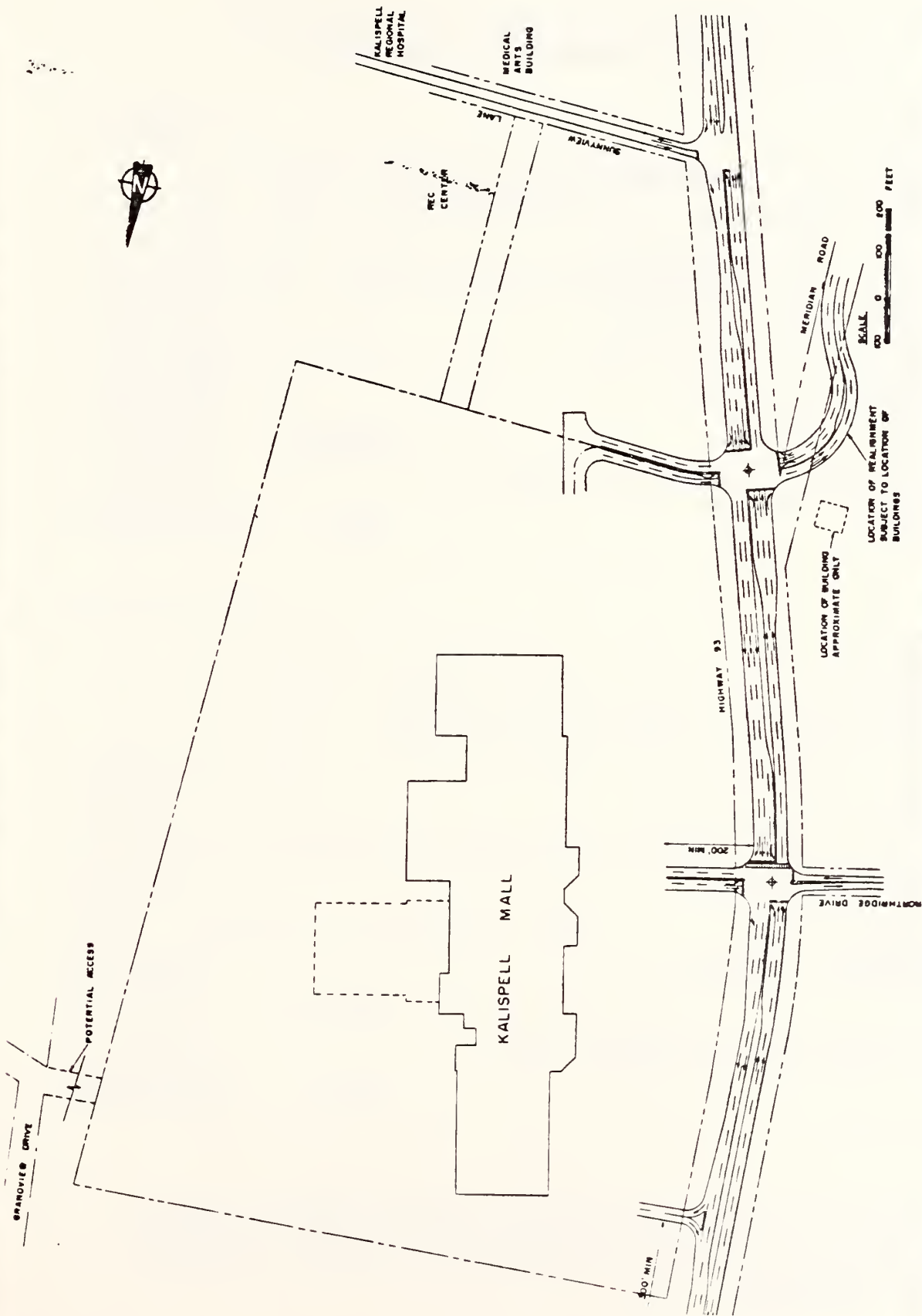
unstable flow, with tolerable operating speeds being maintained though considerably affected by changes in operating conditions.

The map on the following page is a functional design of roadways showing the recommended lane arrangement corresponding to Alternative 4. It is anticipated that traffic signals would be needed at the U. S. Highway 93/Meridian Road intersection and possibly at the intersection of U. S. Highway 93 and Northridge Drive.

Any intersection and road improvements on Sunnyview Lane will be a function of how the hospital and adjacent lands develop in the future. It would be desirable for a strong pedestrian system to be planned, connecting the shopping center site with the Northridge residential area, and with the Sunnyview medical/hospital complexes.

The table on pages 26 and 27 and the associated figure on page 23 provide comparative cost estimates for Alternatives 1 through 4. As the table makes clear, Alternatives 1 and 3 would cost about the same amount. Alternatives 2 and 4 would cost about the same as each other but considerably less than Alternatives 1 and 3. It should be noted that these cost estimates do not include the costs for construction of internal access roads, property acquisition, landscaping, sidewalks, signing, and painting.





## RECOMMENDED ALTERNATIVE ROADWAYS

## CONSTRUCTION COST ESTIMATES FOR THE ALTERNATIVES

<u>Alternative 1</u>	<u>\$</u>
(a) Improvements to Meridian Road Intersection:	
(i) Improve Meridan Road Approach:	202,500.00
(ii) Improve Highway 93:	77,500.00
(b) Improvements on Northridge Drive Intersection:	63,000.00
(c) North Access Improvements:	24,000.00
(d) Sunnyview Lane Access, etc.:	229,000.00
(e) Highway 93 Overall:	<u>252,000.00</u>
	Subtotal: 848,000.00
(f) Engineering & Contingencies: 20%	<u>170,000.00</u>
	TOTAL: <u><u>\$1,018,000.00</u></u>

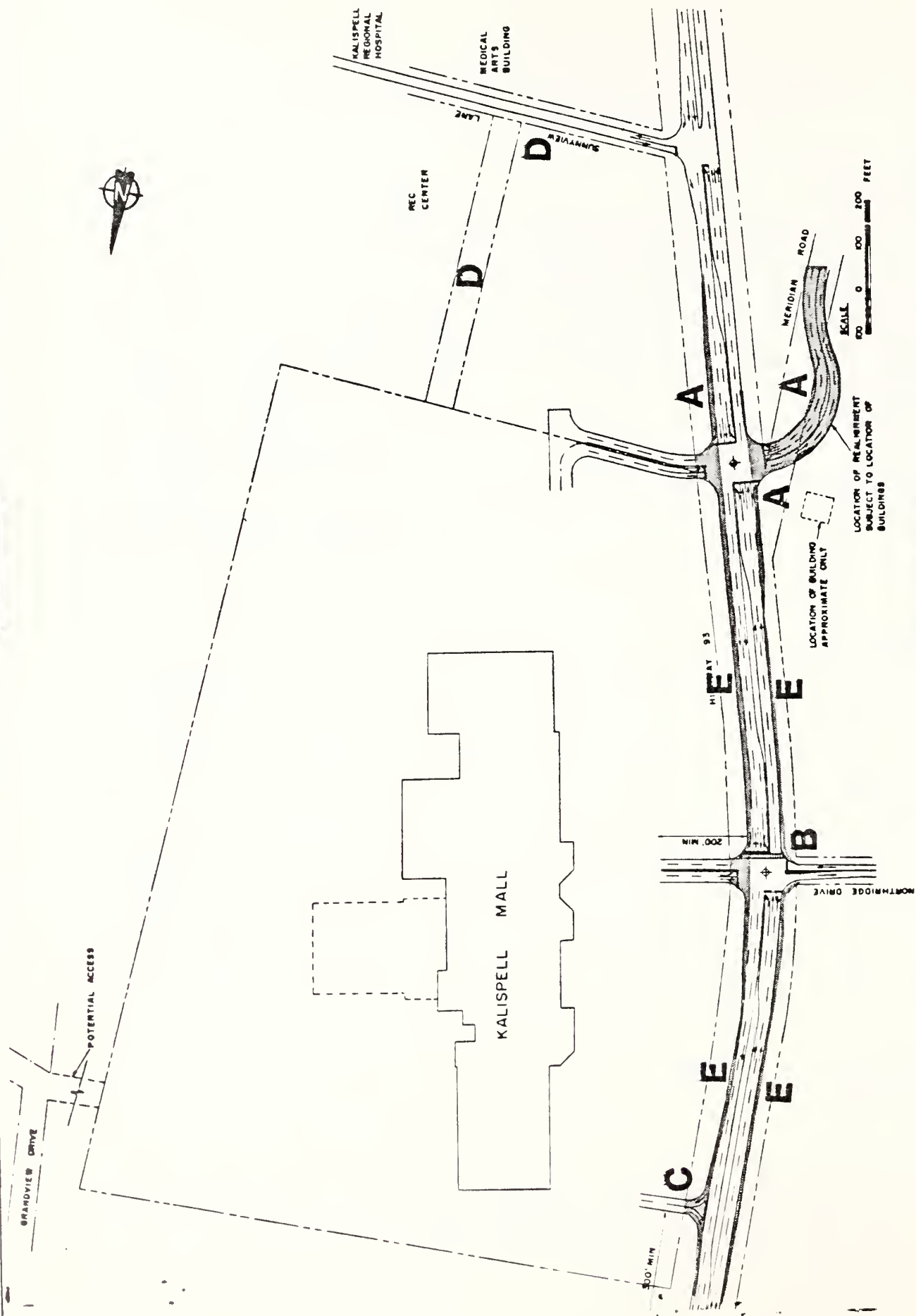
<u>Alternative 2</u>	
(a) Improvements to Meridian Road Intersection:	
(i) as in 1(a) (i) plus lengthen R/T lane, N/B to E/B:	206,000.00
(ii) as in 1(a) (ii):	77,500.00
(b) as in 1(b):	63,000.00
(c) as in 1(c):	24,000.00
(d) Sunnyview Lane:	00.00
(e) Highway 93 Overall:	<u>168,000.00</u>
	Subtotal: 538,500.00
(f) Engineering & Contingencies: 20%	<u>108,000.00</u>
	TOTAL: <u><u>\$ 646,500.00</u></u>

Note: The letters in parentheses refer to roadway segments as shown on the map on page 150. These cost estimates do not include construction of internal access roads, property acquisition, landscaping, sidewalks, signing, and painting.

Construction Cost Estimates for the Alternatives  
(Cont.)

<u>Alternative 3</u>	<u>\$</u>
(a) Improvements to Meridian Road Intersection:	
(i) Meridian Road Approach:	244,500.00
(ii) Improve Highway 93:	80,000.00
(b) Improvements to Northridge Drive Intersection:	48,000.00
(c) as in 1(c):	24,000.00
(d) Sunnyview Lane Access, etc.:	245,500.00
(e) as in 1(e):	<u>252,000.00</u>
Subtotal:	894,000.00
(f) Engineering & Contingencies: 20%	<u>179,000.00</u>
TOTAL:	<u><u>\$1,073,000.00</u></u>

<u>Alternative 4</u>	
(a) as in 2(a) (i) and 2(a) (ii):	283,500.00
(b) as in 2(b):	63,000.00
(c) as in 2(c):	24,000.00
(d) as in 2(d):	00.00
(e) as in 2(e):	168,000.00
plus lengthening of additional 3rd lane N/B	<u>17,000.00</u>
Subtotal:	555,500.00
(f) Engineering & Contingencies: 20%	<u>112,000.00</u>
TOTAL:	<u><u>\$ 667,000.00</u></u>



## ROADWAY SEGMENTS

## VI. LIST OF COMMENTORS

H.N. Stewart, Division Administrator, U.S. Department of Transportation,  
Federal Highway Administration, Region Eight, Montana Division  
Terrence D. Carmody, Executive Director, State of Montana, Environmental  
Quality Council  
Dr. Robert Archibald, Acting SHPO, Montana Historical Society, Historic  
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Robert E. Schumacher, Fisheries Manager, State of Montana, Department of  
Fish and Game, Region One  
James E. Mohn, Current Planner, Advisory Technical Staff  
Thomas N. Bedient, Assistant Administrator, Kalispell Regional Hospital  
D. Wayne Bollinger  
Carol Carr  
Mike Thoennes  
K.D. Black and Frances Black  
Richard L. Taylor  
Virgil N. Wells and Alice M. Wells  
James J. Thompson  
Raymond A. Thon  
Thomas A. Gilman  
Ireta A. Galloway and M.J. Galloway  
Al Reed  
James E. Vidal, Murray, Kaufman, Vidal & Gordon, P.C.  
David D. Bohyer  
Robert S. Keller, Keller & Gilmer

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## VII. LETTERS AND RESPONSES





U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

REGION EIGHT

Montana Division  
Federal Office Building  
301 S. Park, Drawer 10056  
Helena, Montana 59601

March 27, 1980

IN REPLY REFER TO:

HEB-MT 01111a 510.10

HELENA, MONTANA

Mr. Ronald P. Richards, Director  
Montana Department of Highways  
Helena, Montana 32-SCK

Attn: Mr. Les R. Reichelt

Gentlemen:

Subject: DEIS Kalispell Mall Shopping Center

We note that the draft EIS does not address the concerns of President Carter's Urban Policy. The following items are suggested for use as a guide to ensure comprehensive assessments of the proposed project on the central city:

①

- (a) Development impacts. How will the proposed facility impact the spatial distribution of development among central city and suburban jurisdictions?
- (b) Tax revenue impacts. How will central city tax revenues be impacted by the proposed facility, accounting for anticipated changes in property, sales, and income taxes?
- (c) Public expenditure impacts. What additional expenditures will the central city have to bear as a result of the proposed facility and its corresponding development shifts?
- (d) Employment impacts. What types of jobs will be created, lost, or retained in the project area and in the central city as a result of the project? These employment impacts should be identified by job categories-skilled, unskilled, professional, service, etc., - and by duration, permanent, or temporary (construction).
- (e) Accessibility impacts. Will central city residents benefit from the proposed facility in terms of access to employment and other trip generators? Who are the beneficiaries of the improved access potential?



①

All of the impacts noted by the author of these comments have been addressed to some degree in the impact statement. The President's Urban Policy is directed at instances where there is a suburban growth increment clearly beyond the immediate influences of the central city. The proposed location of the Kalispell Mall is virtually adjacent to and surrounded on three sides by the city limits of Kalispell. For all intents and purposes, the location is functionally a part of the central city (it is only five minutes driving time from the Central Business District) and the impacts addressed are those upon the central city.

It should also be pointed out that the Environmental Impact Statement issued on this project by the Montana Department of Highways has been prepared within the framework of the State of Montana Environmental Policy Act and appropriate State and Department guidelines. There is no involvement of federal funds in this project and no EIS is required under the National Environmental Policy Act. Therefore, it must be assumed that for purposes of this particular document the Federal Urban Policy Guidelines are not required to be addressed.

However, as mentioned above, all of the impacts mentioned in the letter are addressed to some degree. Page references in the DEIS are as follows:

- (a) Development Impacts: pages 83-93; 106-122
- (b) Tax Revenue Impacts: pages 116-120
- (c) Public Expenditure Impacts: pages 120-127
- (d) Employment Impacts: pages 106-121
- (e) Accessibility Impacts: pages 33-48
- (f) Environmental Impacts: Sections A and B.

(f) Environmental Impacts. What impacts will the proposed facility have on central city noise levels, air quality, water quality, neighborhood integrity, visual quality, and other quality of life factors?

If you have any questions about our recommendations we will be happy to discuss them with you.

Sincerely yours,

*W S Dumber*  
*for* H. N. Stewart  
 Division Administrator

Date Recd. Project		3/31/80	
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STATE OF MONTANA  
ENVIRONMENTAL QUALITY COUNCIL  
CAPITOL STATION  
Helena, Montana 59601

Telephone (406) 449-3742

Terrence D. Carmody, Executive Director

GOV. THOMAS L. JUDGE or  
Designated Representative  
Lt. Gov. Ted Schwinden

HOUSE MEMBERS  
Dennis G. Nafte, Chairman  
Verner L. Bendisen  
Daniel Kemmis  
Arthur H. Sheldon

SENATE MEMBERS  
William F. Haffernan, Vice Chairman  
Mike Anderson  
Harold Dover  
Bill Thomas

PUBLIC MEMBERS  
Frank Dunkle  
Bob Kiesling  
Doris H. Milner  
Norm Starr

February 25, 1980

Mr. Homer G. Wheeler  
Engineering Division  
Department of Highways  
Helena, MT 59601


Dear Mr. Wheeler:

2

This will acknowledge receipt of the draft environmental impact statement on the Kalispell Mall Shopping Center.

We appreciate the opportunity to review this document.

Sincerely,

  
TERRENCE D. CARMODY  
Executive Director

TDC:es

②

No response required.





# MONTANA HISTORICAL SOCIETY

## HISTORIC PRESERVATION OFFICE

225 NORTH ROBERTS STREET • (406) 449-4584 • HELENA, MONTANA 59601

February 26, 1980

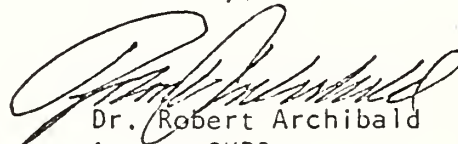
Mr. Les R. Reichelt, Environmental Coordinator  
Dept. of Highways  
Helena, MT 59601

RE: Kalispell Mall Shopping Center

Dear Mr. Reichelt:

3 Thank you for the opportunity to comment on the draft Environmental Impact Statement for the above-named project. The draft demonstrates knowledge of Sec. 106 of the Historic Preservation Act and Executive Order 11593. Furthermore, as the professional survey indicated a lack of cultural and historic properties eligible for listing on the National Register of Historic Places this project is in compliance with Section 106 of the Historic Preservation Act.

Sincerely,

  
Dr. Robert Archibald  
Acting SHPO

RA/TF/prb

③

No response required.

STATE OF MONTANA



DEPARTMENT OF

FISH AND GAME

Helena, MT 59601  
March 24, 1980

Mr. Les Reichelt, Environmental Coördinator  
Department of Highways  
Helena, MT 59601

Dear Mr. Reichelt:

On February 22 we received correspondence soliciting comment on a draft EIS relating to the Kalispell Mall Shopping Center.

④ Our department has previously commented on this issue in a letter to Steve Petrini dated August 23, 1979. A copy of that correspondence is enclosed, and I urge that our concerns be taken into consideration as this project progresses.

Sincerely,

James A. Posewitz, Administrator  
Ecological Services Division

JAP/sd

Enc

cc: Tom Hay

④

The items included in the Game Department letter dated August 23, 1979 have been considered in the DEIS. (See letter on the following page.)

# STATE OF MONTANA

## DEPARTMENT OF FISH AND GAME



Region One  
490 N. Meridian  
Kalispell, MT 59901  
August 23, 1979

Steve Petrini  
Planning Director  
Area Wide Planning Organization  
Room 414 - 723 Fifth Ave. East  
Kalispell, MT 59901

Subject: Comments on Kalispell Mall Proposal and Buffalo Hill Development

We have reviewed some of the proposal material supplied to the Montana Department of Fish, Wildlife and Parks and some plans for storm sewer collection retention. We would suggest that the settling basin have the following:

1. Surrounded by a chain link fence for child safety.
2. Access and plans for periodic sediment removal.
3. Baffled outlet structure to act as a skimmer and to prevent floatable oils, gasoline and debris from being emitted to drain pipes and subsequently into ground water or a stream.
4. The outlet at the pipe end should spill into an area armored with field stone to reduce velocity acquired in the pipe.

Sincerely,

Thomas R. Hay  
Regional Supervisor

By: Robert E. Schumacher  
Robert E. Schumacher  
Fisheries Manager

TRH:RES:ns





## ADVISORY TECHNICAL STAFF

Providing Comprehensive Planning Services To The  
Governing Bodies And Citizens Of Flathead County

★ ★  
★

April 28, 1980

Homer G. Wheeler, P.E.  
Assistant Administrator  
Engineering Division  
Department of Highways  
2701 Prospect  
Helena, MT 59601

Dear Mr. Wheeler,

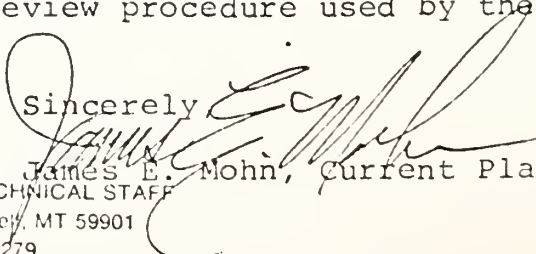
Re; Kalispell Mall E.I.S.

Thank you for the opportunity to review and comment on the Draft E.I.S. for "Kalispell Mall Shopping Center".

This office wish to point out a few technical erros which should be addressed;

- ⑤ 1. Page 85; the legend of land uses represented on this illustration are somewhat misleading in that the actual uses within the "commercial" area west of U.S. 93, and Meridian Road, south of Northridge Drive are more accuratly described as "neighborhood or professional offices".
- ⑥ The triangle area between North Meridian Road and U.S. 93 contains a florist shop, tire shop, warehouse, neighborhood grocery and four residences. The majority of the are shown as commerical is infact vacant land and recommended for urban high density as indicated on page 87.
- ⑦ 2. Page 89; The zoning represented on this map is not totally correnct. The site shown as County B-4, is not zoned, as a result of District Court action. Other area indicated as being unzoned or county zoned are in fact in the City and zoned, other areas are incorrectly labled.
- ⑧ 3. The last paragraph of page 88 is misleading. The Kalispell City-County Planning Board and the Advisory Staff have operated under directions interpreted from the Planned Community Development Act. This act requires that growth of Cities through annexation and zoning must be in accordance with the adopted plan for that city. Thus amendments are considered as a tool, not an arbitrary review procedure used by the Planning Board.

Sincerely,

  
James E. Mohn, Current Planner

Return Address: ADVISORY TECHNICAL STAFF  
723 5th Avenue East • Kalispell, MT 59901  
Or Phone 755-5300-279

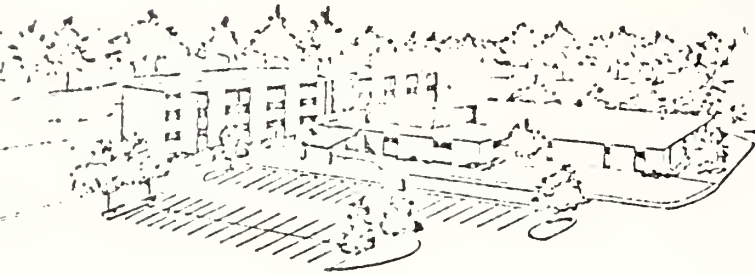
⑤ This comment is noted.

⑥ Also located in the triangle area between North Meridian Road and U.S. 93 is a gravel pit which, although vacant, would not be suitable for urban high density development without considerable filling. There is a large vacant parcel of land located midway between land parcels now occupied by business to the north and light industry to the south. This vacant area should have been designated on the existing land use map and the oversight stands corrected. (See the new map in Section IV-B of this FEIS.)

⑦ The zoning map was compiled using the best available information at the time. The new city zoning map was completed by the Planning Department in February 1980 and was not available until after the DEIS was published. Also the DEIS was prepared before the decision of the court on the County's preliminary zoning resolution designating the site zone as B-4.

⑧ This comment is noted.

received 3-10-80



## KALISPELL REGIONAL HOSPITAL

KALISPELL MONTANA 59901  
PH: 755-5111

March 7, 1980

George W. Clark  
Administrator

Eugene G. Johnson  
Associate Administrator

Mr. Homer G. Wheeler, P.E.  
Assistant Administrator, Engineering Division  
Department of Highways  
2701 Prospect  
Helena, Montana 59601

Re: Kalispell Mall Shopping Center - E.I.S.

Dear Mr. Wheeler:

Thank you for the copy of the Environmental Impact Statement regarding the proposed Kalispell Mall. I have reviewed the document thoroughly and have some critical comments.

9

1. Not one of the issues relating to adverse traffic impact on the hospital complex was considered. My January 14, 1980 letter to Haworth and Anderson (copy to you) outlines several concerns vital to Kalispell Regional Hospital. The E.I.S. fails to present any evidence or commentary regarding these critical issues.
2. Mr. Jack Geraghty, Executive Vice President, Haworth and Anderson met for about five minutes with the Administrators of Kalispell Regional Hospital the week of January 7, 1980. Our strong recommendation at that meeting was

9

The draft environmental impact statement addresses the usage of Sunnyview Lane by hospital and medical offices on page 34. Future traffic generated by residential development, a nursing home and the new programs and expansion of Kalispell Regional Hospital is discussed on page 42 and regional traffic projections for the year 1990 are reflected on page 44. Mitigating measures are discussed on page 48 which include incorporating a pedestrian linkage system to the mall with the medical/hospital complexes across Sunnyview Lane, and eliminating the south access to Sunnyview Lane to provide a separation of hospital related traffic from shopping center traffic.

In addition, alternatives two and four were specifically looked at with the separation of hospital related traffic from shopping center traffic as a means to lessen potential traffic impacts.



Mr. Homer G. Wheeler, P.E.

March 7, 1980

Page 2 . . . . .

2. (cont'd)

for Haworth and Anderson to interview some of the medical staff leadership and explore issues that impact upon medical care to their patients.

⑩

None of our doctors were contacted by Haworth and Anderson. It is reasonable to assert into this matter the interests of over 100 physicians and dentists who were excluded from the impact analysis of the study. This omission is conspicuous by the failure of the E.I.S to address this major impact component in any way.

⑪

3. The bulk of the E.I.S. supporting documentation and commentary directly quotes the feasibility studies, also paid for by Developers Diversified, i.e., George E. Bordner, Economic Consultants, "Feasibility Report, Kalispell Mall"; and Stahly Engineering, Consulting Engineers, "Engineering Report, Specifications, and Plan, Kalispell Mall". The comments made by Haworth and Associates are essentially quotes from these Developers Diversified studies and are nearly identical in wording, content, concept and conclusions. This narrow and subjective approach to preparing the E.I.S. has excluded a significant number of adverse as well as positive environmental impact issues.

⑩ The consultants assumed that the concerns of the hospital were those addressed in the letter of January 14, 1980. Members of the consultant team reviewed in detail the minutes of previous hearings of the Planning Board held on the subject of the proposed shopping center. The comments of the spokespersons for the hospital and the nearby medical office facilities were well-stated in those hearings.

⑪ These comments are so noted.

Mr. Homer G. Wheel, P.E.

March 7, 1980

Page 3 . . . .

The hospital seeks to assist in any effort to continue the environmental impact analysis in a comprehensive and fair-minded quest for an objective E.I.S.

Should the Department of Highways seriously consider our offer to help in the traffic related issues, I will be happy to fly to Helena to present and illustrate the hospital's deep concerns.

Sincerely yours,



THOMAS N. BEDIENT  
Assistant Administrator

TNB:rl

cc: Governor Thomas Judge

Van Kirke Nelson, M.D.  
Kalispell Medical Arts

✓ Les R. Reichelt  
Montana Highway Department



March 11, 1980

Les Reichelt  
Environmental Coordinator  
Montana Department of Highways  
2701 Prospect Avenue  
Helena, Mt. 59601

Dear Mr. Reichelt:

I would like to express my opinions concerning the environmental impact statement, issued by the Montana Department of Highways, for the proposed mall on Buffalo Hill in Kalispell.

⑫ The issue of the \$6.8 million of potential sales that were lost within the Flathead County trade area seems a little much. A mall, particularly the type being proposed for Buffalo Hill, would only capture a small part of these potential lost dollars because we would still not have the retail trade business as a Missoula or Spokane. No matter whether we have a mall or not, X-amount of business will have to go to the larger service areas. Also the \$6.8 million relates to 1977 when gas was less than \$.50 a gallon and not the \$1.25 it is today. In other words people will not be taking their shopping stints to areas of great magnitude in distance due to the expense of travel.

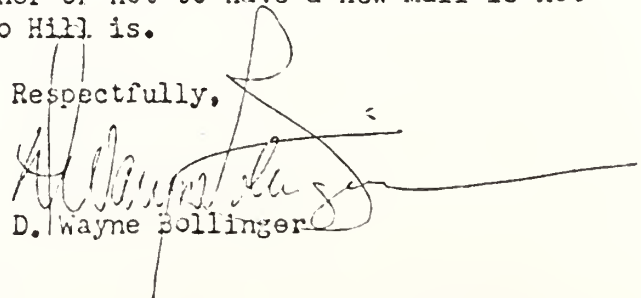
I question whether the mall will fill the void in the inadequate department store space in Kalispell if the anchor stores for the mall are two or three of the larger retail establishments already located downtown. Many of the smaller businesses that occupy the proposed mall will be ones already established elsewhere in the trade area of Kalispell. Relocation of store space within an area does not necessarily provide additional footage.

⑬ Granted a new mall annexed into the city would generate much additional tax dollars for the city, if the mall is compared to bare undeveloped land; but if the mall were compared to the same land filled with single and multi-family housing, the tax dollars from the mall would not look as attractive.

⑭ The last issue which was not adequately addressed was the real impact of a mall on Highway 93 North and the access roads of Meridian and Sunny View Lane. Meridian is totally inadequate to manage the traffic from the West side of town especially with the Jr. High School within a block of it. Sunny View Lane will be overwhelmed by traffic from the mall, the hospital, the clinic, and by residents living in the area. Highway 93 North will be a total zoo.

I do believe that even though done by good intentions, the impact statement on the mall did not adequately present the true picture of the environmental changes that would occur. The issue of whether or not to have a new mall is not a problem with me but the location on Buffalo Hill is.

Respectfully,

  
D. Wayne Bollinger



⑫ These comments are noted.

⑬ Single and multi-family housing development to the full build-out potential of 350 units on the site would ultimately generate approximately \$100,000 more in property tax dollars compared with the proposed shopping center. However, it should be noted that the development of 350 units would not occur immediately and would most likely be spread over at least a 10 to 15 year period. Such development would have a greater adverse fiscal impact in terms of local government operating and capital costs such as sewer, water, roads, fire and police protection, schools and parks than would a shopping center development.

⑭ Traffic impacts on the roadways mentioned were discussed in the transportation section, page 45 of the DEIS.

550 4<sup>th</sup> Ave E. N.

Kalispell, MT.

March 12<sup>th</sup>, 1980

Dear Sir:

⑮ My husband and I are opposed to having the mall built by the hospital and Jr. High area.

If Kalispell needs another mall - which is highly unlikely - then find another location where the traffic will not be a problem.

Sincerely -

Coral Carr

⑮

These comments are noted.

received  
3-14-80

March 12, 1980

Mr. Reichelt,

16

In regards to comments on the environmental impact statement for the proposed mall on Buffalo Hill in Kalispell, I would like you to know that I and all my acquaintances are wholeheartedly in favor of the findings contained in the statement.

As a resident of Kalispell the last two years I am all too familiar of the problems of jobs and of competitive shopping in the area. While I don't wish Kalispell to embark on a high speed growth process I do believe it is time to join the 20<sup>th</sup> Century.

Thank you for the opportunity to comment.

Yours Truly,  
Mike Froennes

①6

These comments are noted.



received 3-17-80

March 13, 1980

Mr. Les Reichelt  
Environmental Coordinator  
Montana Dept. of Highways  
2701 Prospect Ave.  
Helena, Montana 59601

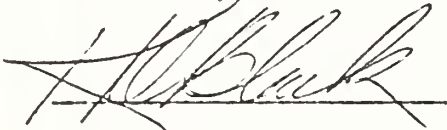
Dear Sir,

17 As residence and taxpayers of a home located immediately north of the proposed mall on Highway 93 North in Kalispell we wish to convey our feelings regarding what we and many others in this area, feel is a great and much needed addition to Kalispell.

Traffic wise, we do not feel it would have any adverse effect whatsoever, quite the contrary, access to and from the proposed site would create no additional problem. In fact, we can and do believe that the choice of site is ideal to that of any other in all of Kalispell environmental wise as well as traffic wise.

We are 100 percent in favor and would welcome it, as would a large percentage of Flathead Valley residents.

Yours truly,



K.D. Black

319 Harrison Blvd.  
Kalispell, Mt. 59901



Frances Black

⑪

These comments are noted.

March 14, 1980

Les. R. Reichelt  
Environmental Coordinator  
Montana Department of Highways  
2701 Prospect Avenue  
Helena, MT 59601

Dear Mr. Reichelt:

This is in response to the Highway Department's request for comments on the Environmental Impact Statement issued on the proposed Shopping Center to be located off Highway #93 on the north edge of Kalispell.

While the EIS sets forth probable traffic load (16,408 vehicles per day, in and out), I do not think they properly addressed the severity of the highway condition such traffic would cause or what highway changes would be necessitated. My business office is located at Sunset Plaza off U.S. #93 just south of the proposed shopping center site and we have tried without success to obtain some kind of highway improvement to improve traffic flow and safety. Enclosed herewith and dating back to 1972 are letters on this subject from myself, the State Highway Commission, Kalispell Police Department, State of Montana Department of Highways, & Mark Agather. The only answer to my last letter of 3/2/79 to Mr. Tom Barnard was a phone call telling me that a highway engineer would stop by in a few days to study the problem more and would stop in and talk to me about it --- but I've heard nothing more on the subject.

This one problem alone points up the inadvisability of approving a project that will add thousands of cars a day to this problem stretch of U.S. #93 until major improvements to the highway can be accomplished at the same time. Similar problems will be experienced at entrances to the hospital and medical clinic, churches, theater, schools, etc.

(18) It would appear to me that this will require widening of the road to permit left turn lanes, extensive sidewalks and curbs, additional traffic lights, revisions to dividers, etc.

Unless such highway improvement work is scheduled in conjunction with the approval of the shopping center access, the impact of such a project has not been properly addressed in the environmental impact study. I hope you will give this your serious attention as we are terribly concerned with highway safety problems in this area.

Sincerely yours,

*Richard L. Taylor*  
Richard L. Taylor  
330 Woodland Ave.  
Kalispell, MT 59901

encl.

18

Necessary improvements to roadway sections and intersections are discussed in the Alternatives section of the DEIS, pages 139-152. The approval of approach permits will be contingent on completion of acceptable design and construction details such as access points, traffic lights, turning lanes, acceleration and deceleration lanes, sidewalks and curbs. The project developer will be expected to pay his fair share of improvements which are attributable to increased traffic levels generated by the proposed shopping center.

206 Farview Drive  
Kalispell, Montana 59901  
March 15, 1980

Mr. Les Reichelt  
Environmental Coordinator, Montana Dept. of Highways  
2701 Prospect Ave.  
Helena, Montana 59601

Gentlemen;

In response to your request for comments regarding EIS concerning the building of a proposed Mall on Buffalo Hill. To start with we are in favor of the Mall because we live at Park View Terrace and could walk to market. I don't think there would be as much traffic with a Mall as if the area was filled with high rises as planned. When business hours are over with the traffic stops, with residences it goes on day and night.

19

For a longer view of things I believe it would solve most of the parking problems down town at Kalispell. Shopkeepers could rent space at the Mall and have plenty of parking space without having to rebuild their own places of business and try to find parking space.

Together with taking the highway off Main Street the Court House too would have more room to build where they now are and get rid of the traffic hazard that now exists in that area.

I believe if Meridian Road were made a 4 lane Highway to take off at its north end and come back to the present 93 south of the airport or at Balls' Crossing with a 4 way light at Highway 2 on a Clover leaf a lot of the problems would be solved. Most of the noise and congestion would be taken off Main Street and even that would be a big improvement to the town.

Very truly yours,

Virgil M. Wells  
Alicia M. Wells



19

These comments are noted.

211 Segiah Way  
Kalispell, MT. 59901

March 17, 1980

Les R. Reichelt  
Environmental Coordinator  
Montana Dept. of Highways  
2701 Prospect Ave.  
Helena, Montana 59601

Dear Mr. Reichelt,

In response to your request for comment on the proposed shopping center on U.S. 93 North in Kalispell I wish to make the following comments.

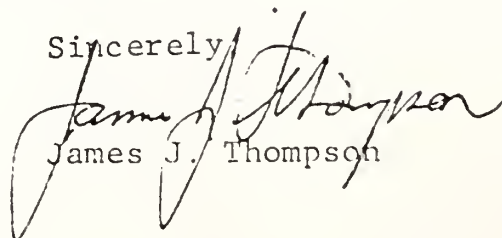
(20) Your EIS comments, very briefly, about the fact that the proposed mall could set in motion a series of land use changes due to the presence of the mall. This is not a possibility but a reality. Property owners in the area have already requested rezoning and variances for commercial uses. This is just the tip of an iceberg. Property from Main and Idaho all the way to Whitefish will be under pressure for commercial development. Properties to the north of the site are for sale and advertised as commercial.

The Kalispell City County Planning Board has recommended denial of the project because of its adverse effects on the community and present land use planning. The Kalispell City Council has also voted against the project.

It should be pointed out that the above two groups have studied the proposal in great detail and found that the proposed site is not conducive to commercial use. Primarily because of the residential area surrounding the site, the extensive medical community in the area, and the fact that spin-off development from the project would cause major rezoning along arterials leading to and thru the project area.

Your EIS does not give sufficient study to future impacts in the area to make or reach any conclusion that is valid. Your department should look at other shopping centers in Montana for a comparison as to secondary development. For example Rim Rock Mall in Billings and South Gate Mall in Missoula and you be the judge if you want U.S. 93 North to be one continuous strip development.

Sincerely,

  
James J. Thompson

20

Whether or not future land use along U.S. 93 will be strip development in nature is determined to a great extent by local government decisionmakers. This factor is noted several times in the DEIS in discussions about the proposed shopping center's impact on future land use in the area.

March 13, 1930

Les R. Reichelt  
Environmental Coordinator  
Montana Department of Highways  
2701 Prospect Ave.  
Helena, MT 59601

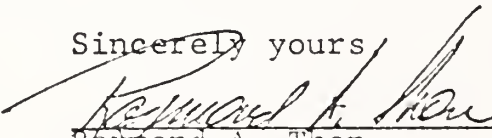
Dear Mr. Reichelt:

I have read the Environmental Impact Statement for the proposed Mall on the north edge of Kalispell proposed by Developers Diversified and wish to make some comments on it for your consideration.

21 On Page 90 of the impact statement it states that "a number of different retail outlets concentrated in one center could be a positive impact, mitigating the potential for haphazard strip developing." I think an impartial view of this development would reach an opposite conclusion as is suggested by the statement on Page 92 stating: "Development of the proposed project could set in motion a series of events leading to some presently unknown land use changes in the project area. Measures should be initiated by jurisdiction with responsibility to anticipate and deal with such changes. The absence of such planning, however, would have consequences both unavoidable and adverse." The City has been trying to get the County Commissioners to accomplish proper land use planning and zoning in the area surrounding the city without success and thus far have only assurance that it will be done but will take considerable time. This planning and zoning must be done & approved before allowing the shopping center to be constructed, or the center will serve as justification for an extensive, continuing highway "strip" to be zoned commercial and we will have all of the same uncontrolled traffic problems that now exist on the other three "strip" approaches to Kalispell.

22 The environmental impact statement does not address the proper sequence of these development events --- only points out that proper planning and zoning should be done if problems are to be avoided. I would like to suggest that logical area zoning precede any approval of highway access approval to the proposed shopping center.

Sincerely yours,

  
Raymond A. Thon  
144 3th St. East  
Kalispell, MT 59901

②1      This comment is noted.

②2      This comment is noted.

Kalispell, Mont.  
March 20, 1980

Dear Sir;

In regards to the Shopping Mall proposed for Kalispell, Montana. I am in complete agreement with the Comprehensive planning Board's proposal for the land use in that area. This is a hospital and school area. There is no logical reason to place a fifty five acre development there which will bring in somewhere between one and two thousand cars a day not counting the traffic other businesses growing around the mall will cause.

(23) I live on Northridge Drive and according to the plans this road will lead directly into the mall area. Most of the homes are fifty feet or so from the curb. With the increase in traffic it will make it very difficult + dangerous to have small children in the area. I have a small boy who has played all his life in front of our house.

The downtown area is in the process of making many improvements which will mean large investment of time + money. When this project is completed, and additional shopping areas are needed, then a mall placed in a proper area under a comprehensive plan for land use can be considered.

Thank you for your time

Thomas A. Gilman  
205 Northridge Dr.  
Kalispell, Mont.



23

It is anticipated that traffic on the west leg of Northridge Drive will continue to be light and local in nature. However, the intersection of Northridge Drive and U.S. 93 will experience heavier traffic causing delays for residential traffic entering and exiting Northridge Drive from U.S. 93.

209 Kirsten Drive

Kalispell, Mont.

March 24, 1980

Les Reichelt

Highway Dept. of Mont.

Dear Sir:

24 Please do everything possible to discourage the  
Mall on Buffalo Hill here in Kalispell. We are so  
very proud of our Hospital area as it now is, so  
Please don't allow it to be ruined.

Most Sincerely;

M.J. Galloway

Ireta A. Galloway

*Ireta A. Galloway*  
*m.j. Galloway*

②4

These comments are noted.

Kalispell, Mont.

March 25, 1980

Dear Sir,

I note you are interested in public input in regard to Kalispell Hwy. 95 North & the proposed mall on Buffalo Hill. I'm not sure I can say anything your organization is not aware of but here I go.

I plan to enclose two items, an area map & a clipping from one of the papers that cover this area. You will note from this clipping we have an immediate area to the east called Evergreen that has a population of some 12,000 people. To the south & east we have a Bigfork, Swan Lake & Echo Lake area with another 10,000 people. Now, add another 10,000 coming in & out from Columbia Falls, Hungry Horse, Glacier Park area & all of this traffic miles with the 2,000 man change of shift at the Anaconda Aluminum plant every 8 hours, then finally those up from Highway 35 & down from Highway 11 & 2 to where it meets the Lindale Road from the 11 & 2 airport & send this whole bunch into Kalispell on Idaho Street & you have an environmental impact of some size. My



family lives just north east of Kalispell in what they call the Hiicrest area & in order to take the shortest route (energy) to & from Kalispell we go on the Whitefish Stage. We join this caravan of late to work, impatient, irritated, bunch of chuckle dodgers at Idaho Street & 7<sup>th</sup> Ave. E.N.

(25) If that portion of Highway 93 from Kalispell north for a couple miles was up graded as you have proposed & if some of the traffic on La Salle was siphoned off to 93 north it should be of help. To do this it would seem West Reserve from La Salle to 93 north must be improved & West Evergreen should also be extended to intercept to Hwy. 93. With these two roads upgraded & the shopping mall built on Buffalo Hill much of our congestion should be corrected.

Flathead County has 50,000 cars registered & 30,000 trucks & pickups. That totals 80,000 vehicles, we need some vision & action. The same place to start is Hwy. 93 north & Buffalo Hill.

I hope I have said something that makes sense. Thanks

Al. Reed  
57 Wellington place  
Kalispell  
Mont 59901



25

These comments are noted.

LAW OFFICES OF  
**MURRAY, KAUFMAN, VIDAL & GORDON, P.C.**  
240 FIRST AVENUE WEST  
P.O. BOX 899  
KALISPELL, MONTANA 59901

MARSHALL MURRAY  
LEONARD L. KAUFMAN  
JAMES E. VIDAL  
JOHN R. GORDON  
JOHN H. BOTHE

TELEPHONE  
406-755-5700

27 March 1980

Mr. Les R. Reichelt  
Environmental Coordinator  
Montana Department of Highways  
2701 Prospect Avenue  
Helena, MT 59601

Re: Kalispell Mall Shopping Center  
Draft Environmental Impact Statement (E.I.S.)

Dear Mr. Reichelt:

I have had an opportunity to thoroughly review the draft Environmental Impact Statement concerning the Kalispell Mall Shopping Center on behalf of my clients, Kalispell Medical Arts, 210 Sunny View Lane, Kalispell, Montana.

Kalispell Medical Arts, a Partnership, is a medical office complex which is located adjacent to and immediately West of the Kalispell Regional Hospital. Kalispell Medical Arts was completed slightly before the construction of the hospital, and since the construction of the hospital, additional medical offices have been built South of both facilities. There are currently plans to expand the medical community in the Buffalo Hill area. This information has already been made available to you in a letter you received from Mr. Thomas Bedient, dated January 14, 1980, which was addressed to Haworth and Anderson, Inc., West 621 Mallon Avenue, Spokane, Washington, 99201. As I am certain you are aware, the medical community has been developed in accordance with the adopted Comprehensive Plan and Zoning.

Kalispell Medical Arts would like to make the following critical comments concerning the draft E.I.S.:

(26) First of all, the E.I.S., from its start, page 4, paragraph 4, is under a misconception that the "site" was zoned B-4, Community Business, by the Flathead County Commissioners, thereby making the proposed "mall" a permitted use on the site. In fact, the site is not zoned B-4; in fact, Flathead County was enjoined from zoning the site B-4 as a result of Judgment handed down in the case of Little, et al, v. Board of County Commissioners of

26

The issuance of the DEIS was before the referenced decision in the court case. It should be noted that the matter presently is pending the outcome of an appeal to the Montana Supreme Court. (Please see Section I of this FEIS.)

Flathead County, City of Kalispell, and the Public Service Commission, State of Montana, and Developers Diversified, Ltd., in the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Flathead, Cause No. DV-80-0129, and signed March 20, 1980, by Robert M. Holter, presiding Judge. The Judgment stated, in part,

"That the Defendant Board of County Commissioners of Flathead County is enjoined from proceeding with the petition of defendant/intervenor Developers Diversified, Ltd., and the Cameron heirs for zoning district in a zone designation; that the resolution of intent to create a zoning district, of December 7, 1979, of defendant Board of County Commissioners is vacated and set aside."

(27) In Findings of Fact and Conclusions of Law signed by Judge Holter, the Court stated that the County Commissioners' attempt to zone the site was "contrary to the form and spirit of the land use laws of the State of Montana relating to the planning and zoning of the city-county jurisdictional areas." Further, the decision went on to say that "the designation of a sixty-acre tract as B-4 commercial zone, in the middle of a residential area, constitutes spot zoning, was abuse of discretion of the Commissioners, and is contrary to law. I might note that the misconception in the E.I.S. is carried out additionally on pages 13, 88, 90, 100, and 129.

I believe that the E.I.S. uses the statement as an excuse for the fact that the mall (1) does not comply with adopted comprehensive plans; and (2) it is not compatible with existing land use in the neighborhood, which is 99% residential or uses compatible with residential.

(28) I also object to the Haworth and Associates subjective approach in the preparation of the E.I.S. The subjective language is apparent throughout the report, and I believe that page 71, paragraph 3, is illustrative, where the report reads "also residents in the Buffalo Hill area will have a shorter traveling distance to the shopping facilities..."

(29) It is important to realize that Sunny View Lane and Conway Drive are the only points of access to the Kalispell Medical Arts building. Conway Drive is the designated emergency entrance and exit to and from the hospital. The E.I.S. totally fails to address the impact of increased traffic volumes on U. S. 93 and the effect this will have on the medical facilities at the intersections of Sunny View and 93, and Conway Drive and 93.

It is rather obvious that the Department of Highways, Flathead County, the City of Kalispell, the residents of the Buffalo Hill area, the Kalispell Regional Hospital, and my clients, deserve an E.I.S. which is broad, objective, and considers all the impacts of the proposal--both positive and negative.

27 Please refer to response No. 26.

28 Every effort was made by the Department and the consultants to analyze potential impacts of this proposal as objectively as possible. Nothing is subjective about paragraph 3 on page 71, it merely states a positive impact which is as objective as stating negative impacts related to the proposed project.

29 Increased traffic levels on the public roadways mentioned were addressed in the transportation section of the DEIS. Please see Section IV-A of this Final EIS.

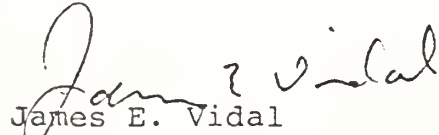
27 March 1980

30 I have had an opportunity to review Mr. Thomas N. Bedient's letter to your department dated March 7, 1980. I believe Mr. Bedient's efforts were a sincere attempt to make you aware of the concern of the medical community on Buffalo Hill. These concerns were not addressed in the Haworth and Associates document. I have reviewed your letter to Mr. Bedient dated March 11, 1980, and feel that the letter falls short of addressing his concern, and indicates that the Department of Highways does not even conceive all of the adverse impacts the proposed mall would have on the medical community. The elimination of access on Sunny View Lane represents but a small portion of the problems the mall would cause for this area of Kalispell, and at most, would eliminate approximately 5% of the problems connected with the mall.

I realize that the Montana State Department of Highways has conducted few E.I.S. studies in conjunction with proposed shopping centers. It is my hope that in view of the lack of action by the Montana State legislature to require a review of proposed shopping centers under the provisions of the Montana subdivision laws, you will view your responsibility in conducting E.I.S.'s in conjunction with shopping centers in an extremely careful manner. I assure you that the precedent you set will be very important, both now and in the future. It is my extreme hope that you carefully review the findings of fact and conclusions of law handed down in this matter by Judge Holter, and all other evidence which is available to you. If you have trouble obtaining information, please let me know and I will be happy to help you to the best of my ability. The people of Kalispell and of Flathead County are concerned and deserve nothing more than your complete dedication to insuring the integrity of the review process. For your convenience I am sending you a copy of Judge Holter's findings of fact and conclusions of law and accompanying judgment. Thank you for your attention to this matter.

Very truly yours,

MURRAY, KAUFMAN, VIDAL & GORDON, P.C.

  
James E. Vidal

JEV/crr

cc: Governor Thomas Judge  
Capitol Building  
Helena, MT 59601

cc: Homer Wheeler, Assistant Administrator  
Engineering Division  
Montana Department of Highways  
2701 Prospect Avenue  
Helena, MT 59601



30

Please refer to response No. 9.

Mr. Les R. Reichelt

4.

27 March 1980

cc: Van Kirke Nelson, M.D.  
Kalispell Medical Arts  
210 Sunny View Lane  
Kalispell, MT 59901

cc: Mr. Thomas N. Bedient  
Assistant Administrator  
Kalispell Regional Hospital  
310 Sunny View Lane  
Kalispell, MT 59901

cc: Mr. Robert S. Keller  
Attorney at Law  
P. O. Box 1954  
Kalispell, MT 59901



644 First Avenue, East  
Kalispell, Montana

March 28, 1980

Mr. Les Reichelt  
Environmental Coordinator  
Montana Department of Highways  
2701 Prospect  
Helena, Montana 59601

Dear Mr. Reichelt:

Please accept the following written comments in response to the Draft Environmental Impact Statement on the Kalispell Mall Shopping Center:

Page 4 - ¶3:

- ③1 It should be noted that the majority of commercial businesses referred to are dissimilar to a regional shopping mall, and even retailing for that matter.

Page 4 - ¶4:

- ③2 The B-4 commercial designation has been disallowed by the Eleventh District Court. The existing land use designation is residential under the 1974 Comprehensive Plan.

Page 9:

- ③3 A site plan generally designates location and type of landscaping to be done. If what is shown on the site plan is in fact what is planned, the indicated landscaping is limited at best.

Page 10 - ¶2:

The landscaping, if done per site plan, is grossly inadequate for a project of this nature and magnitude on a site this size.

Page 10 - ¶3:

- ③4 How are the 500-600 jobs to be generated?

Page 13:

The B-4 commercial zone has been declared illegal by the Eleventh District Court.

Page 15 - ¶4:

- ③5 The statements made in this paragraph will not be true if the shopping center is developed.

- ③① These comments are noted.
- ③② Please refer to response No. 7.
- ③③ It is necessary to limit the amount of large vegetation to be located on-site for traffic safety reasons. Also, the indicated landscaping would introduce more species of trees and shrubs than are now found on the site.
- ③④ Once the shopping mall has been constructed, jobs will be generated in managerial, sales, clerks, secretarial and maintenance fields. The project sponsors have estimated 500 to 600 full and part-time jobs will be filled in phase I. Employment recruiting practices would be determined by the individual retail outlet operations. The completion of phase II will create another 75 to 100 jobs. If relocation from existing stores occurs it is assumed employees will transfer and the number of new jobs actually created by the new stores will be approximately 335 to 400.
- ③⑤ Please see the discussion on pages 90 to 93 of the DEIS.

ENVIRONMENTAL IMPACT STATEMENT RESPONSE  
(Continued)

Page 16 - ¶2:

- ③6 Reference to "water and sewer service...." is irrelevant in that the site is not within the incorporated city limits.

Page 24:

- ③7 How do "potential pollutants" in paragraph 4 relate to "no alteration of surface water quality..." in paragraph 2?

Page 24 - ¶4:

- ③8 Who would be responsible in the event "It would be necessary to reshape and revegetate the road ditch along with other improvements.." (which are un-named)?

Page 34:

- ③9 Where and when will the roads be linked, and who will bear the cost?

Page 41:

- ④0 Does the percentage of traffic from the North assume the linkage of Grandview and Evergreen?

Page 40 - ¶4:

- ④1 It is highly unlikely that shoppers will be able to avoid the use of US Highway #93, especially north of US Highway #2. The majority of shoppers from east and south of the development have no viable alternative. This will require travel through the intersection of US Highway #2 and US Highway #93 by a large number of shoppers.

Page 42 - ¶2:

- ④2 The author has made a gross assumption that Grandview Drive will be connected to the Evergreen area by 1990. It would have been more realistic to proceed on the assumption that the connection would not be made.

Page 47 - ¶4:

- ④3 Does the increase of 450 vph translate to over 10,000 vpd at an intersection which is currently over design capacity and which has an "E" rating?

Page 47 - ¶5:

The Grandview Drive extension is again a gross assumption.

Page 48 - ¶7:

- ④4 Who will pay for the "... optimization of traffic signals, and other traffic management measures..."?

Page 59 - ¶2:

- ④5 Who will bear the cost of "... but level one traffic control..."?



- 36) Regardless whether or not the site is within the incorporated city limits a description of services provided in the general area would be inadequate without the mention of city water and sewer services being provided within the city limits, since the site adjoins land incorporated in the city limits and city utility lines actually cross the site.
- 37) The potential for pollutants entering the Stillwater River would be likely if a direct drainage ditch from the settling pond to the river is utilized. Mitigating measures mentioned would reduce this pollution potential. It is recommended that the drainage ditch which leads to the river not be utilized (as it was first planned to be) so that no alteration of the surface water quality will result from the on-site retention pond.
- 38) The project sponsor would be responsible.
- 39) Please see Section IV A of this FEIS.
- 40) Yes, the distribution shown on the map on page 41 assumes the linkage of Grandview and Evergreen.
- 41) Please see Section IV A of this FEIS.
- 42) Please refer to Section IV A of this FEIS.
- 43) Four hundred fifty vehicles per hour is a P.M. peak estimate and would not translate into 10,000 vpd over a 24 hour period. The P.M. peak hour is the highest number of traffic per hour anticipated. The volumes of traffic would decrease significantly during the nighttime A.M. hours.
- 44) Please refer to Section IV A of this FEIS.
- 45) Please refer to Section IV A of this FEIS.

ENVIRONMENTAL IMPACT STATEMENT RESPONSE  
(Continued)

Page 62 - ¶2:

- 46 It is interesting to note that "Noise levels resulting from the operation of the facility may be mitigated by providing a sound-absorbing buffer through the careful use of landscaping and screening on site." But, that on the site plan, (Page 9) there is minimal landscaping proposed. It is assumed then, that the properties abutting the proposed site should provide this landscaping and screening?

Page 71 - ¶3:

- 47 Also, shoppers who do not live or pass by the site and which are currently using the Central Business District (which is most shoppers) will have about an additional 4 miles to travel. This population would be significant, and the fuel consumption associated with the extra travel by that population would also be significant.

Page 84 - ¶1:

- 48 The author fails to define "commercial" in reference to land use. In fact, the area is not in transit to "commercial", by any but an absurd definition, and the current and planned predominant land use is either residential, or uses which are quite compatible with residential land uses, such as hospital facilities.

Page 88 - ¶1:

- 49 The recommendations of the Planning Board were adopted by resolution by the Kalispell City Council which indicates a decisively stronger position than "...acceptable in principle..". The B-4 Zoning classification is not in effect for the site as stated, but has in fact been declared illegal through trial in the Eleventh District Court. It should further be noted that the "findings of fact" issued by the Commissioners were found to be either largely in error or irrelevant by the Court.

Page 88 - ¶3:

- 50 This entire statement and position has been discounted by the Court in the judge's "Conclusions of Law" in the Kalispell Mall decision. The judge further found that,

"The standard state zoning and enabling act provides that zoning regulations 'Shall be made in accordance with a comprehensive plan' and that the enabling legislation of a majority of states includes this requirement or some variant thereof." (Memorandum to the Kalispell Mall decision).

Page 91 - ¶3:

- 51 "Constraints on growth of the center..." is but one concern. Other commercial growth, most probably in the form of "strip development" is highly likely to occur in the undeveloped areas around the center, and as a direct result of the center's development. While this may be a crystal ball approach, one can see precisely this type

46 Mitigating measures are sometimes not reflected in the initial site plan, as in this case where the mitigating measures are being suggested. Berming and landscaping could easily be provided by the project sponsor on the proposed site.

47 These comments are noted.

48 Paragraph 3 on the same page (84) goes on to describe the commercial land use in the area by name. The area was described in paragraph 1 on page 84 as being in transition from a natural resource base--primarily agricultural with some gravel extractions to a built up residential, institutional and commercial base. Further on in this same section on Land Use (page 86, paragraph 2) the comprehensive development plan designation of mixed residential for the Buffalo Hill area is noted.

49 These comments are noted.

50 It is noted that the final disposition of the court case is pending upon appeal.

51 Please refer to response No. 20.

ENVIRONMENTAL IMPACT STATEMENT RESPONSE  
(Continued)

of activity in Missoula, MT in conjunction with the SOUTHGATE MALL; and again in Great Falls, MT in conjunction with the HOLIDAY VILLIAGE MALL; and again in Billings, MT in conjunction with the RIMROCK MALL.

Page 92 - ¶1:

- 52 The Court's decision on the Kalispell mall case gives considerable credibility to a Comprehensive Development Plan. Because of that decision, land use development in the vicinity of the proposed development, and in all the Falthead County for that matter, is subject to much more than speculative comment."

Page 92 - ¶3:

It was determined by both the Kalispell City Council and the APO planning staff that the development of a shopping center in this location was less than desirable, which can be equated with being an "adverse impact." In light of this, development of the center itself can be construed as adverse, and, by not developing the center, a very large adverse impact would not only be mitigated, but omitted altogether.

Page 98 - ¶1:

- 53 How does the author conclude that the 700 jobs will be "created" when a large portion of the square footage leased, and consequently, a large number of the jobs will be taken by businesses which are already located in Kalispell?

Page 100 - ¶5:

Again, the site has not been zoned B-4 commercial.

Page 100 - ¶2:

- 54 The discussion of growth in GAF sales indicated only a need for more retail space, or for greater utilization of vacant retail space already existing in the community. It in no way indicates necessity for a "regional mall" and certainly not in any specific location, including Buffalo Hill.

Page 113 - ¶3:

- 55 Sale leakage and potential sales are merely factors associated with market potential and marketing techniques employed in a given community. They should not be translated to indicate that a development of this nature is necessary, and especially not in a location whose only clearly visable attributes are vacancy and availability.

Page 116 - ¶3:

- 56 There is nothing to support conjecture that "major capital costs" will be borne

52

These comments are noted.

53

The same paragraph goes on to explain that not all of these 700 jobs will be new as some of the retail establishments will be relocated from existing outlets in Kalispell.

54

These opinions are noted.

55

The wording on page 113, paragraph 3, does not indicate that a shopping center is "necessary". Projections are made for potential uncaptured retail sales and additional sales based on estimated growth for 1980 and 1985.

56

The total amount of capital costs borne by the project developer will be decided upon final decision by appropriate local and state agencies, if the project is approved.

ENVIRONMENTAL IMPACT STATEMENT RESPONSE  
(Continued)

be borne by the developer. Due to the lack of support, it is more likely that the public sector will, in fact, bear the cost of capital improvements.

Page 118 - ¶1:

- 57 If, "...there are no new county roads proposed as a result of the project..." one must assume that the Grandview Drive - Evergreen Connection should not be a factor in the traffic section of the EIS, and that because the connection will not be effected, the impacts on the existing transportation system would be significant and therefore the traffic impacts of the center's development should be reassessed.

Page 119 - ¶2:

- 58 None of the \$1.5 million in Community Development funds has been earmarked for street improvements.

Page 120 - ¶1:

The adverse impact on the existing downtown area could be avoided totally if the center is not developed.

Page 133 - ¶1:

- 59 The author discusses "...the manner in which local government and other responsible agencies plan and prepare..." - (for suburban growth). It is disconcerting that the author expresses no concerns to existing "plans and preparations" already undertaken by local government, specifically the Comprehensive Development Plan, but proceeds through the entire Draft EIS as if the Kalispell mall was a reality.

Page 136 - ¶1

- 60 While most people agree that a concentration of retail outlets is preferable to hap-hazard strip development from a land use planning standpoint, the author fails to show how this particular location lends itself more to this type of development than to residential or any other type of development. The author also fails to note that expansion or utilization of existing retail concentrations would effect a similar, preferable arrangement.



57 Please see the foreword to this FEIS.

58 This comment is correct and the DEIS is in error in this regard. Resources from the Community Development Grant will be used for housing rehabilitation, downtown rehabilitation loans, and housing for the handicapped.

59 The Comprehensive Development Plan is discussed in the Land Use Section of the DEIS beginning on page 83. The purpose of DEIS is to provide as much factual information as possible about the impact of a specific proposal, in this case the proposed shopping center at the site on Buffalo Hill.

60 The action upon which the DEIS is based is specifically for the approval by the Department of Highways of approach permits to the proposed mall site. The question of the relative merits of other uses for the site would be a subjective discussion beyond the scope of this impact statement and more properly within the framework of the local planning process and the final decision-making authority of the appropriate local legislative bodies.

The preceding comments are in reference to matters specifically addressed in the draft EIS, and because of that, the subjectivity of the comments has been minimized.

However, the content as well as the presentation of the material is disconcerting. Such things as the author's willingness to speculate on the construction of the Grandview Drive - Evergreen connection and potential for the creation of 700 new jobs are not consistent with the author's unwillingness to speculate on costs to the public for roads, public utilities or public services which result directly or indirectly from the development of the center.

References to such things as major capital costs being borne by the developer, the connection of Grandview Drive and Evergreen, a transition of land uses to commercial around the site, and B-4 commercial zoning for the site, are presented as if they were the state of things today when in fact none are. And there is little to support that they will be. To the reader things like this, presented as fact, paint a clouded picture. Social and monetary costs that are or will have very real impacts on the community are overshadowed by intangibles and unknowns like new jobs, potential economic growth, and greater cultural diversity. The real and potential impacts have been diluted by suppositions and assumptions and what was commissioned as an environmental impact statement reads like a feasibility study for a potential financier. At best, the draft environmental impact statement addresses the requirements of the Montana Environmental Policy Act but fails miserably in the spirit.

Most Sincerely,

*David D. Bohyer*  
David D. Bohyer



KELLER & GILMER

ATTORNEYS AT LAW  
SUITE 18, WHIPPS BUILDING  
KALISPELL, MONTANA 59901

March 28, 1980

ROBERT S. KELLER  
BRENDA J. GILMER

P. O. BOX 1954  
(406) 755-1300

Department of Highways  
2701 Prospect Avenue  
Helena, Montana 59601

Attention: Mr. Les R. Reichelt  
Environmental Coordinator

Re: Kalispell Mall Shopping Center

Dear Mr. Reichelt;

61 I am enclosing the Findings of Fact, Conclusions of Law and Judgment that were recently rendered by the District Court of the Eleventh Judicial District, in and for Flathead County. I represent the plaintiffs in that action, and I would ask that the Findings of Fact, Conclusions of Law and Judgment be incorporated as a part of this comment on the draft of the Environmental Impact Statement. I ask this, not only because the Judgement makes it clear that the county commissioners cannot zone this as a commercial zone, and the City of Kalispell cannot issue a building permit, but because of the Findings of Fact of the court on so many items that are essential to the EIS.

Referring to the draft by paragraph:

62 III. DESCRIPTION, A. Location (page 4) - Ninety-nine per cent of the surrounding area is residential. There are three non-conforming land uses that pre-existed the Comprehensive Plan of 1974. There are a limited number of uses that are not residential, but that are compatible with residential, within the remaining 1 per cent of the use of the surrounding area.

63 Throughout the EIS, the author contends that the Board of County Commissioners recently adopted a zoning resolution changing the site from an unclassified zone to a B-4 commercial (unlimited commercial) zone. The Board of County Commissioners passed a resolution of intent to do just that, and suit was brought before they could pass the resolution zoning this area. As a result of the suit, they cannot zone it commercial.

61 As noted previously, this court action is presently being appealed. A copy of the District Court decision is made a part of this FEIS and is included as Appendix A.

62 These comments are noted.

63 These comments are noted.

64 B. Type of Development (page 11) - The City of Kalispell has denied the mall water and sewer connections unless they annex, and if they annex, they must comply with the City of Kalispell zoning, which is residential, i.e., they cannot have this mall in that area if they annex. The developers filed a complaint with the Public Service Commission against the City of Kalispell for failing to grant sewer and water. This complaint is presently pending before the Public Service Commission, and was held up pending the outcome of the law suit. It is still to be pursued. The developers do not own the land for which they are asking for sewer and water, it is outside of the city's "service area" as prescribed by the Public Service Commission, and, of course, the effective present law suit. That is the extent of the "possibility of hooking up to water and sewer service systems provided by the City of Kalispell".

65 C. Permits and Approvals Required, 4. Local and County Governments (page 12) - The City of Kalispell has been enjoined from issuing a building permit for this purpose by the court, and apart from that, the City of Kalispell has a present ordinance pending that will deny a building permit to any construction outside of the city that fails to comply with the Comprehensive Plan.

Additionally, as noted, the county cannot approve the zoning resolution mentioned.

66 IV. CATEGORICAL IMPACT ANALYSIS, A. Natural Environment, 2. Natural Drainage Courses, b. Probable Impact of the Proposed Action (page 23) - The Soil Conservation Service reported, much earlier, that the runoff will pollute the Stillwater River, and the figures proposed by Developers Diversified were incorrect. This evidence was introduced at trial, and not rebutted. The evidence revealed that there would be a severe erosion problem as well as a pollution problem as a result of the runoff, and this should be further investigated by the affective state agencies.

67 B. Man-Made Environment, 1. Transportation, a. Existing Conditions, (1) Transportation Network (page 34) - The plans to link Grandview Drive directly east to Evergreen Way "thus forming a major east-west route" are no more than a twinkle in someone's eye at the present. The county has no condemnation right, nor has it ever attempted to exercise any, and no effort has been made to place the proposed connection under any federal program



64

These comments are noted.

65

Please see Section I of this FEIS.

66

Both erosion and storm water runoff can be controlled on the site by use of a retention pond facility and practicing mitigating measures listed on page 24 of the DEIS.

67

Please refer to Section IV A of this FEIS.

Mr. Les R. Reichelt  
March 28, 1980  
Page 3

that would provide for the right of eminent domain. This particular proposed artery assumes major significance in this EIS, for the true impact on the remaining arteries (if this Grandview Drive-Evergreen Way link is not made) is not assessed.

68 On the same page, Sunnyview Lane is referred to, but Conway Drive is ignored. Conway Drive is not on anybody's system, so no traffic count is made, etc. Conway Drive is one block south of Sunnyview Lane, parallel to Sunnyview Lane, going east off of Highway #93. It is a better access road to the hospital, medical offices, etc., because it was better constructed (e.g., the approach to Sunnyview Lane must be made at right angles, or the vehicle will go into the barrow pit of Highway #93, whereas the approach to Conway Drive fill in those barrow pits). The traffic count on Sunnyview Lane dropped significantly when Conway Drive was completed, but this is not reflected by Stahly Engineering, the Montana highway traffic count or the EIS. However, the anticipated traffic into the shopping mall will cause a serious congestion problem at the intersections of both Sunnyview Lane and Conway Drive.

69 Again on the same page, the EIS reflects that the U. S. Highway #93-Highway #2 intersection is a subject of concern due to the possible adverse impact from the new mall's traffic, and that the intersection is presently operating in the upper limit of tolerable congestion. I mention this now, because it is ignored later.

70 b. Probable Impact of the Proposed Action, (1) Shopping Traffic (page 42) - the EIS reflects that it is based on the assumption that Grandview Drive will be connected to the Evergreen area by 1990, and there is no basis for that assumption other than the intolerable conditions that would be created by the congestion at the mall, i.e., things will get bad enough that there will have to be some other outlet.

(3) Combined Traffic (page 45) - This is again predicated on the Grandview Drive-Evergreen Way link.

71 (page 47) - The EIS reflects that the shopping traffic on the west leg of Northridge Drive will be light and only local in nature. Three-Mile Drive is a farm-to-market road, paved, that extends generally to the northwest from Kalispell, and covers all of the local part of the county to the northwest. It intersects

68 Please refer to Section IV A of this FEIS.

69 Please refer to Section IV A of this FEIS.

70 Please refer to Section IV A of this FEIS.

71 The statement relating to Northridge Drive in the DEIS is based on actual and projected traffic counts. It is also based on an assumption that the Meridian Drive/Highway 93 intersection will be improved and signalized in conjunction with the development of the proposed shopping center.

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with Meridian Drive, south of the Meridian Drive-Highway #93 intersection. Its intersection with Meridian Drive is already intolerable, and left-turn traffic from Three-Mile Drive onto Meridian Drive is extremely difficult, because of the engineering. As a consequence, northbound traffic coming from Three-Mile Drive now shortcuts through the residential areas west of U. S. Highway #93 and Meridian Drive, culminating on Northridge Drive, to intersect with U. S. Highway #93. Two-Mile Drive, which is parallel to, but south of Three-Mile Drive, also intersects with Meridian Drive, and a left turn from Two-Mile Drive, to be northbound on Meridian Drive, is equally intolerable. Hawthorne Drive is a shortcut from Two-Mile Drive to Three-Mile Drive, and then Northern Lights Boulevard goes directly up to Northridge Drive and onto U. S. Highway #93. To say that the shopping traffic on the west leg of Northridge Drive will be light and only local in nature is preposterous. It is one of the fundamental complaints of the plaintiffs in the law suit, who have witnessed the traffic. It has been complained about in public hearings, and no effort was made to address the situation in this EIS.

72 Later on the same page (page 47) the EIS refers to the future availability of east-west routes such as the Grandview Drive extension (already commented upon) and the "improved Reserve Drive" resulting in a diversion of traffic from the downtown area. There is nothing on the drawing board with respect to improving Reserve Drive. And, in the light of the federal highway budget cut, recently announced, any suggestion in this EIS relative to federal funds for increased traffic arteries should be revised. We have just been informed that the potholes on U. S. Highway #2, in Kalispell, will not be repaired this year because of lack of funds resulting from the cut. (That's not quite correct, I'm sure the potholes will be filled as well as possible, but the plans were to tear up the entire road and restore it, and those plans have now been shelved). And, if the EIS is referring to diverting traffic from the intersection on U. S. Highway #2-U. S. Highway #93, it would be correct. If it is talking about the "downtown area" as the central business district of Kalispell, the future availability of the proposed east-west route will have no affect on the central business district.

73 c. Measure to Mitigate Adverse Impact (page 47) - There are no significant proposals. We've already commented on the east-west routes, and the suggestions to alleviate the U. S. Highway #93-U. S. Highway #2 intersection are minimal. The conclusion, in "d. Unavoidable Adverse Impact" (page 49) is correct, and

⑦② Potential improvements to Reserve Drive have been discussed by the Department of Highways and Flathead County. The comments related to the Central Business District are noted.

⑦③ The alternatives discussed in the DEIS are those which are available to and within the jurisdiction of the Department of Highways.



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categorically states that if mitigating measures to improve traffic circulation are not implemented, the anticipated increases in traffic volumes generated by the proposed project should be considered as significant adverse impacts. And no acceptable or adequate mitigating measures are suggested. The developers are not going to put through the east-west routes, are not going to do anything about the Highway #93-Highway #2 intersection, and it is not likely that either the federal government or the State of Montana plans to make such improvements. Putting it another way, Section 75-1-201(2)(d), MCA, requires an EIS to "study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflict concerning alternative uses of available resources", and this EIS should have reflected that placing the proposed shopping mall within the central business district of Kalispell, where the traffic arteries are already developed, would alleviate the substantial improvements that must be made by the federal government, the State of Montana, the County of Flathead, and the City of Kalispell to accomodate a shopping mall at the north end of town. I looked in vain for the appropriate alternatives that are required to be in the EIS.

74 There is much of the Draft EIS with which we agree, e.g., there will be an unavoidable adverse impact on the air quality (page 60), an increase in noise (page 69), and I am assuming that the uncontested unavoidable adverse impact will be taken into consideration by the Department of Highways in issuing approach permits.

75 As an aside, there is a reference, on page 73, of an average daily consumption of about 200,000 gallons of water per day, and a maximum use of about 400 gallons per day. I'm sure that means 400 gallons per minute.

12. Land Use (page 83) - This section fairly well lays out the development of the area, states that the county commissioners approved a zoning classification of B-4 commercial for the 60-acre site which would allow the shopping center, and which would be contrary to the Comprehensive Plan, states that the Comprehensive Plan is not a specific land use control, and concludes with the statement that whether the land use changes take the form of residential development, as suggested in the Comprehensive Plan, or the form of strip commercial development along Highway #93 will depend upon the policies and land use controls



74

These comments are noted.

75

The sentence referred to on page 73 of the DEIS should read as follows: "The high pressure Buffalo Hill district (gravity tank) has an average daily consumption of about 200,000 gpd and a maximum use of about 400,000 gpd".

implemented by the jurisdictions. If the jurisdictions do not do proper planning, the consequences will be both unavoidable and adverse. And this is the paradox. If the jurisdictions don't have the power to stop the shopping mall, how can they stop the strip commercial development that will follow? If they do have the power to stop the unavoidable and adverse consequences, then they have the power to stop the shopping mall in the first place, which would obviate the need for the EIS. The Draft EIS goes on to state, page 98, that the proposed center will have a profound influence on the pattern of future land use in the area, that it will be a magnet, but that the adverse impacts can be mitigated by early and close coordination between the city and county governments and the development by these entities of effective plans, policies and programs. If this is done, the EIS goes on to say, then there should not be any unavoidable adverse impacts upon population in the Kalispell area. And then goes on to say, page 104, that the "growth-inducing nature of the proposed project may cause some existing potential residential land in the immediate area to be considered for other uses".

76 The Draft EIS, page 116, states that the fiscal impact of the project would appear to be positive for both the city and the county assuming that most of the major capital costs including installation of water and sewer utilities and immediate-area street improvements are to be borne by the project sponsors. I don't know where that assumption came from, for the project sponsors have committed themselves to nothing in writing, and the "immediate-area street improvements" are a far cry from the overall fiscal impact upon the city and county, as the Draft EIS recognizes.

The report recognizes the significant adverse economic impact on the downtown core area, page 119, reflects the \$1.5 million of federal community development funds which are to be used in the central business district, and concludes that it is possible that the downtown area would remain competitive as a retail center, and the adverse effects of the new mall would be mitigated to some extent. An appropriate alternative is obvious, i.e., put the proposed shopping mall within the confines of the central business district or reasonably close thereto.

77 C. Social Environment, 9. Public Health Services (page 125) The draft recognizes that the traffic generated on Sunnyview Lane and Conway Drive, at the intersections with U. S.

⑦⑥ It is the policy of the Department of Highways to require that major improvements caused by the development of projects, such as shopping centers, be borne by the project sponsor.

⑦⑦ Please refer to Section IV A of this FEIS.

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Highway #93, is now significant (page 126), and suggests only that the access to the shopping center site from Sunnyview Lane be eliminated. The only way to permit emergency traffic to use these roads is with traffic signals, and even then, the emergency traffic in non-emergency vehicles (e.g., a private car with an emergency case) will not be able to get through without unreasonable delay. If the traffic signals are installed to accommodate the hospital emergency service, as well as those that are necessary for the traffic volume at Meridian Road and Northridge Drive, we should be looking at four traffic signals in a section of highway that presently has none. And, although it is referred to lightly in the Draft EIS, the Russell School crossing (U. S. Highway #93 and Wyoming) has been a thorn in the side of the Department of Highways for over ten years last. There have been annual meetings with a committee from the Russell School PTA, a representative from the City of Kalispell and a representative from the State Department of Highways. A crossing guard has finally been utilized, but the increased traffic on Highway 93 is going to mandate some signal device for this elementary (grades 1 through 6) school crossing. There are presently five traffic signal devices in the central business district, on U. S. Highway #93, a recently added one south of the central business district at Eleventh Street, and, a seventh one at the intersection of U. S. Highway #2. In short, why do we need additional traffic signals on U. S. Highway #93?

The concluding section on economic and environmental benefits and costs fairly well summarizes the plight. It recognizes that the new shopping center will have a major effect on traffic patterns and traffic levels in the immediate vicinity of the mall (page 128), and that new traffic controls will be necessary. It recognizes the need for resolution of a conflict between the current zoning designation (which we now know is not true) and the Comprehensive Development Plan designation (which the City of Kalispell is adhering to). It recognizes increased pollution (page 129) and glosses over the storm water drainage. It states that capital improvements directly caused by the center will be required to be provided by the project sponsor (required by whom?), but makes no mention of the capital improvements directly caused by the center which are not in the immediate vicinity of the site, i.e., "the center also will accelerate the need for the extension of Evergreen Drive west to Grandview and for the improvement of West Reserve Drive, both north of the proposed site",



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page 131, and "accelerated growth stimulated by the proposed project will ultimately require expanded street and utility systems in the area. The extent and cost of such improvements are inestimable at this time", page 133. In short, what is there about this proposed mall that is beneficial to the town and county that will occur by placing the mall in a different location? The report reflects that "it can be expected, however, that operation of the center will create pressures in the general site area for additional commercial and residential development", page 134, and concludes, "It might be argued that development of the center will adversely affect growth in the downtown core area. However, such a conclusion is relatively unsupported at this time", page 134. Explain that to Missoula, Great Falls and Billings.

78 There is a statutory mandate for you to study, develop, and describe appropriate alternatives, and this has not been addressed. The opposition of the City/County Planning Staff, the City/County Planning Board, and the City of Kalispell to this mall was all concerned solely with land use, i.e., the site that was chosen, as distinguished from having a mall. Two county commissioners (it was a two-to-one vote), without a scintilla of criteria, proposed to give the go-ahead. The authors of your Draft EIS did not consult with any of the professional staff of the City/County Planning Board as to the reasons for opposition, and you have ignored all of that as well. This is not a responsible environmental impact statement, and the complaints that have been made need to be addressed. I'll tell you frankly, as far as the opponents to the shopping mall are concerned, the authors of this Draft EIS took the information provided to them by the developers and incorporated it, referring to the unavoidable adverse effect only when they had no alternative. That tends to make the whole process a rubber stamp, and I am sure that is neither the intent of the law, nor your intention.

Sincerely,

KELLER & GILMER



Robert S. Keller

cc: Honorable Thomas Judge, Governor  
Montana Environmental Quality Council  
Homer G. Wheeler, Assistant Administrator, Dept. of Highways

RSK/mj



78

The alternatives available to the Department of Highways have been thoroughly analyzed in the DEIS and are repeated in this FEIS (see Section V).

The comments related to meeting with the professional staff of the Planning Board are simply not true. The consultants met with Gary Hill of the staff on December 28, 1979, and again with Mr. Hill and Jim Mohn on January 9, 10, and 11, 1980. All of the minutes of Planning Board hearings on the Mall project as well as correspondence on file with the staff were also reviewed.

It should also be pointed out that the purposes of an Environmental Impact Statement are to function as a disclosure document for decision makers and to provide as objective an analysis as possible of potential environmental impacts, the elements of which are identified in the Montana Environmental Policy Act and appropriate guidelines.

#### VIII. PERSONS RESPONSIBLE FOR WRITING AND DISTRIBUTING FEIS

The lead agency for this action is the Montana Department of Highways. The responsible official is Les R. Reichelt, Environmental Coordinator.

This FEIS was prepared for the Department of Highways by Haworth and Anderson, Inc., West 621 Mallon Avenue, Spokane, Washington 99201. Principal in charge of the project was Dr. Anthony H. Anderson. Project Director was John V. Geraghty, Jr. Other preparers included Jack Brenton, document editor; Cathy Hoglen, research associate, James Frank, air quality; James Millgard, graphics; and Karen J. Hicks and Joanne Siegel, production. Associated with Haworth and Anderson, Inc. for this project was Julio Wong, traffic engineer, of Zoltan Kuun Associates, Vancouver, B.C.

APPENDIX A  
FINDINGS OF FACT  
and  
CONCLUSIONS OF LAW



1 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
2 THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

3  
4 TOM D. LITTLE, GERENE C. ) No. DV-80-012  
LITTLE, THOMAS A. GILMAN :  
5 KENNETH A. SPAULDING, BESS \*  
WEBSTER SPAULDING, VIRGINIA )  
6 HOLOMBO, VICTOR Z. CLARKE, :  
BRUCE A. PERSON, MARGARET L. \*  
7 PERSON, VERN R. STEWART, )  
and CAROL STEWART, :  
8 \*  
9

Plaintiffs, )

and \*

10 KALISPELL MEDICAL ARTS, a :  
11 Partnership, \*

COURTS FINDINGS OF FACT

12 Plaintiff Intervenor, )

and

13 vs. )

CONCLUSIONS OF LAW

14 THE BOARD OF COUNTY \*  
15 COMMISSIONERS OF FLATHEAD )  
COUNTY, THE CITY OF :  
16 KALISPELL, and THE PUBLIC \*  
SERVICE COMMISSION OF THE )  
17 STATE OF MONTANA, :  
\*

Defendants, )

and \*

19 DEVELOPERS DIVERSIFIED, LTD., :  
20 a Limited Partnership, \*

21 Defendant Intervenor. :  
22 \*

23 The Court now makes its Findings of Fact and Conclu-  
24 sions of law herein and as follows:

25 FINDINGS OF FACT

26 1. That the City of Kalispell and the County of  
27 Flathead created a City/County Planning Board some time  
28 ago, §76-1-105, MCA, with a jurisdictional area that encom-  
29 passes the City of Kalispell as well as the tract of land  
30 that is the subject matter of the instant dispute. That  
31 land, hereinafter referred to as the "Cameron heirs' tract"  
32 lies immediately north of, but adjacent to, the City of

1 Kalispell.

2 2. That the city abuts the Cameron tract on the south,  
3 on the southeastern boundary, on the western boundary, and  
4 on the northern boundary, i.e., the Cameron tract is virtu-  
5 ally surrounded by the City of Kalispell except for the  
6 northeastern portion.

7 3. The tract involved in the dispute is approximately  
8 59 acres, the bulk of which is owned by the Cameron heirs,  
9 who are not parties to this action. Developers Diversified,  
10 Ltd., a limited partnership, owns a strip of land 60 feet  
11 in width along the western edge of the tract and a little  
12 over 1300 feet long, bounded on the west by U. S. Highway  
13 #93 and on the east by the Cameron tract.

14 4. The tract is divided in two parcels, as reflected  
15 on Exhibit "A" of the complaint, parcel one containing  
16 51.297 acres of land, and parcel two, immediately to the  
17 south of parcel one, containing 7.757 acres of land; that  
18 the land owned by Developers Diversified, Ltd. is on the  
19 western edge of parcel one, and Developers Diversified, Ltd.  
20 has an option to purchase the remainder of parcel one.

21 5. That Developers Diversified has announced an inten-  
22 tion to construct a shopping mall on parcel one, utilizing  
23 the easterly 60 feet of parcel two as a right-of-way or  
24 access from Sunnyview Lane to parcel one; that the remainder  
25 of parcel two is included in the petition to the county  
26 commissioners to be zoned commercial, as hereinafter re-  
27 ferred to.

28 6. The governing bodies adopted a master plan (fre-  
29 quently referred to as the comprehensive plan), §76-1-601,  
30 MCA, in 1974. Under the comprehensive plan, the tract in  
31 dispute is reflected as residential.

32 7. Following adoption of the Comprehensive Plan for



1 the Kalispell City-County Planning Board jurisdictional  
2 area in 1974 Flathead County adopted zoning regulations  
3 applicable to that area in December 1975. Thereafter var-  
4 ious areas in the unincorporated portion of said jurisdic-  
5 tional area were zoned by the Flathead County Board of  
6 Commissioners but zoning action was taken only upon a pet-  
7 ition by a majority of the land owners in any particular  
8 area sought to be zoned. The Flathead County Commissioners  
9 adopted a policy of not initiating zoning applications in  
10 any area except upon petition by such property owners.

11 8. Following the adoption of the Comprehensive Plan  
12 for the Kalispell City-County Planning Board jurisdictional  
13 area in 1974 no request has been made of the Kalispell  
14 City-County Planning Board by the Flathead County Board  
15 of Commissioners to recommend boundaries and appropriate  
16 regulations for the various zoning districts within the  
17 unincorporated area of the Kalispell City-County Planning  
18 Board jurisdictional area.

19 9. In 1979, Developers Diversified requested the City-  
20 County Planning Board to recommend a change in the compre-  
21 hensive plan so as to reflect that the tract in dispute may  
22 be used for a shopping mall, for a commercial purpose. The  
23 City/County Planning Board has a professional staff; public  
24 hearings were held by the planning board with input from  
25 Developers Diversified, from citizens of the area, and from  
26 the planning staff. As a consequence, the planning board  
27 recommended some changes in the comprehensive plan, as it  
28 affects this area, but only within the classifications of  
29 residential use, and specifically rejected changing the  
30 plan to accomodate a commercial use.

31 10. The comprehensive plan, with the proposed changes  
32 was submitted to the Kalispell City Council in the fall of

1 1979. A motion was made to adopt the proposed changes in  
2 the comprehensive plan, and the motion was amended to pro-  
3 vide that the tract in dispute should be reflected as being  
4 for a commercial use, conducive to a shopping center. This,  
5 too, was a public hearing, and the motion to amend was  
6 defeated, i.e., the Kalispell City Council specifically  
7 rejected the proposal that the comprehensive plan be amen-  
8 ded to include a commercial use of the tract in question.  
9 The main motion to adopt the proposed changes to the com-  
10 prehensive plan was adopted, leaving the entire area in a  
11 residential classification.

12 11. The county commissioners have not agreed to the  
13 proposed change in the comprehensive plan, so the existing  
14 comprehensive plan is the same one that was adopted in  
15 1974.

16 12. In November, 1979, the Cameron heirs and Develop-  
17 ers Diversified, Ltd, petitioned the county commissioners  
18 "to amend the Comprehensive Plan as it pertains to said  
19 property and/or zone said property both so as to permit  
20 the commercial development of said property (e.g. proposed  
21 Kalispell mall shopping center)." (Exhibit "A" to the  
22 complaint).

23 13. The county commissioners treated the petition as  
24 one to create a zoning district, pursuant to §76-2-205, MCA,  
25 and gave due notice of a public hearing for December 4,  
26 1979. On December 4, 1979 the Flathead County Commiss-  
27 ioners held a public hearing on the request of the Cameron  
28 heirs and Developers Diversified seeking to impose B-4  
29 zoning on the Cameron tract. At such hearing the City of  
30 Kalispell presented a statement that such zoning was con-  
31 trary to the best interest of the City of Kalispell. Fol-  
32 lowing said hearing no contact was made by any member of

1 the Flathead County Commissioners with any member of the  
2 City administration to determine the reason for the devel-  
3 opment being considered against the best interest of the  
4 City. On December 7, 1979, the commissioners voted, two-  
5 to-one, to pass a resolution of intent to create a zoning  
6 district, comprised solely of the tract of land in dispute,  
7 zoned B-4, and accompanied the resolution with 15 findings  
8 of fact (Exhibit "B" annexed to the complaint).

9 14. In the interim, Developers Diversified, in Octo-  
10 ber, 1979, made complaint to the Public Service Commission  
11 for the failure of the City of Kalispell to furnish sewer  
12 and water connections, applied to the City of Kalispell  
13 for a building permit, in November, 1979, and moved in  
14 large quantities of heavy equipment with which to start  
15 work.

16 15. The plaintiffs, all residents immediately west  
17 of U. S. Highway #93 and immediately west of the Cameron  
18 tract, filed suit on January 3, 1980, to enjoin the comm-  
19 issioners from changing the property to the commercial use,  
20 to enjoin the city from issuing a building permit, to en-  
21 join the Public Service Commission from ordering the city  
22 to grant sewer and water, and to get a declaratory judgment  
23 determining the damages to the City of Kalispell occasioned  
24 by the actions of the county commissioners, and in the  
25 alternative, to appeal from the decision of the county  
26 commissioners to create a zoning district with commercial  
27 zoning regulations.

28 16. That the recommendations of the City/County  
29 Planning Board to amend the 1974 comprehensive plan were  
30 submitted to the Flathead County Commissioners on September  
31 7, 1979, at the same time that the recommendations were  
32 submitted to the Kalispell City Council; that the Board

1 of County Commissioners, on November 15, 1979, pursuant  
2 to §76-2-204, MCA, requested the Kalispell City/County  
3 Planning Board to provide written recommendations and pro-  
4 posals relative to the zoning petition of Developers Diver-  
5 sified and the Cameron heirs, prior to the hearing on the  
6 petition on December 4, 1979; that the City/County Planning  
7 Board responded with the same recommendation for comprehen-  
8 sive plan amendment that was delivered on September 7, 1979.

9 17. That pursuant to §76-2-205, MCA, following the  
10 public hearing on December 4, 1979, the Board of County  
11 Commissioners reviewed the proposals of the planning board  
12 and made revisions or amendments thereto in the form of  
13 findings of fact; that the findings of fact of the commis-  
14 sioners are hereinafter set forth, with this Court's find-  
15 ings in reference thereto:

16 1. The Comprehensive Plan adopted by the Flathead  
17 County Board of Commissioners on March 7, 1978 does  
18 not address the issue of a regional shopping mall  
for Flathead County.

19 This Court finds that the Flathead County Comprehen-  
20 sive Plan adopted in 1978 included a condensed text  
21 of the Kalispell Planning Area Comprehensive Develop-  
22 ment Plan which was adopted in 1974 by both the City  
23 of Kalispell and the Flathead County Commissioners;  
24 that the issue of a regional shopping mall other than  
25 the Kalispell Central Business District was not add-  
26 ressed for the reasons that the Kalispell Central  
27 Business District has in the past functioned as the  
28 trade area's regional shopping area, and the Kalispell  
Planning Area Comprehensive Development Plan had as  
its primary goal for commercial development, the  
retention of the central business district as the  
regional shopping area; that because of that goal, the  
Kalispell City/County Planning Board commissioned a  
study entitled "Central Business District Comprehen-  
sive Plan, Kalispell, Montana" in 1973, completed in  
1974; that the recommendations of the Kalispell City/  
County Planning Board of 1979 specifically addressed  
the issue of the proposed shopping mall.

29 2. The Comprehensive Plan was based on data and infor-  
30 mation compiled so far in advance to its adoption date  
31 that it did not fully address then existing uses on  
Buffalo Hill and the surrounding area.

32 This Court finds that the comprehensive plan referred



1 to is probably the comprehensive plan of the City/  
2 County Planning Board of 1974 as distinguished from  
3 the comprehensive plan adopted for the county by the  
4 Board of County Commissioners in 1978; that in 1974,  
5 existing land use gathered in 1973 was utilized.  
6 Which included the plans of the Kalispell Regional  
7 Hospital as well as a great part of the medical comm-  
8 unity which subsequently located on Buffalo Hill, i.e.,  
9 apart from the 1979 recommended amendment, the Kali-  
10 spell Comprehensive Plan was developed with current  
11 land use data and, in general, the plans of a great  
12 part of the medical community.

13 3. Since the compilation of the information resulting  
14 in the adoption of the Comprehensive Plan development  
15 on Buffalo Hill and the surrounding area has included  
16 single and multi-family residential, professional  
17 offices, hospital, churches, funeral home and crema-  
18 torium, recreational center, floral shop, tire shop,  
19 soft drink bottling warehouse and others. Certain of  
20 these uses do not conform to the uses set forth in  
21 the Comprehensive Plan.

22 This Court finds that when the Kalispell Comprehensive  
23 Plan was developed uses within the area included  
24 single and multi-family residential, churches, a fun-  
25 eral home, a recreational center, convalescent home,  
26 gravel pit, concrete plant, Circle K Store, Pacific  
27 Power and Light Service Center, drive-in theater,  
28 medical offices, and vacant lands; that at the time  
29 of the adoption of the plan, city zoning did exist  
30 and those uses within the city did conform with zoning,  
31 although they may not have conformed to the comprehen-  
32 sive plan; that with the exception of the gravel pit,  
concrete plant, PP&L Service Center, some of the  
vacant land, and single-family residential, the bal-  
ance of the uses were within the city limits; since  
the adoption of the Kalispell Comprehensive Plan,  
additional single-family and multi-family residential  
uses have been established, as well as a hospital  
(which was contemplated at the time), six medical/  
professional office buildings (four of which are  
across the street from the hospital), a crematorium  
was added to the funeral home, a flower shop, welding  
shop, and soft drink warehouse; that the gravel pit  
and concrete plant area has been vacated, and a part  
of the concrete plant area converted to a tire shop.

25 This Court further finds that all of the uses men-  
26 tioned above, with the exception of the welding shop,  
27 some single-family and multi-family residential and  
28 vacant lots, are currently within the city limits  
29 and also have been subject to zoning in accordance  
30 with the Kalispell City Code; on January 1, 1978, the  
31 City of Kalispell adopted a new zoning ordinance  
32 (Appendix B of the Kalispell City Code) and action  
began to rezone the city in accordance with Appendix  
B. As of January 1, 1980, approximately 80 percent  
of the city has been rezoned, and Buffalo Hill and  
the surrounding areas within the city are within that  
80 percent. The rezoning has complied with the Kali-  
spell Area Comprehensive Plan as amended, with the  
exception of a three-acre parcel north of the hospital

1 which was zoned B-4 upon annexation, and the Coke  
2 warehouse site, which was rezoned I-1; the foregoing  
3 uses, within the city, all conform to zoning except  
4 the funeral home/crematorium, the rec center, the  
5 floral shop, the tire shop, and the drive-in theater,  
6 which are currently non-conforming uses (and the fun-  
7 eral home, the rec center, and the drive-in theater  
8 pre-existed the comprehensive plan of 1974, as did  
9 the concrete plant which was converted into the tire  
10 shop).

11 4. A recent survey by the Areawide Planning Staff  
12 shows that approximately 28 offices and five busi-  
13 nesses currently exist in the Buffalo Hill and sur-  
14 rounding area.

15 This Court finds that the survey of the areawide plan-  
16 ning staff was done as a part of the requested plan  
17 change of Developers Diversified, and indicated the  
18 following uses: Business and industrial - 5, located  
19 in 5 buildings; medical offices - 28, located in 7  
20 buildings; junior high school - 1; hospital - 1;  
21 churches - 5; single-family residential units - 387;  
22 multi-family residential units - 82; mobile home  
23 units - 34.

24 This Court further finds that schools, churches, and  
25 hospitals are considered compatible with residential  
26 uses, as are medical offices; that 99 percent of the  
27 development is residential or uses compatible with  
28 residential.

29 5. A recent report prepared by the Areawide Planning  
30 Staff for the Buffalo Hill area shows that since 1970  
31 the population trends in the Kalispell area has stead-  
32 ily progressed to the North, Northwest and Northeast  
33 of the Kalispell City limits.

34 This Court finds that as a part of the report on the  
35 change in plan requested by Developers Diversified,  
36 the Areawide Planning Staff did indicate that since  
37 1970 the majority of growth has occurred to the north  
38 and west of the city; several large commercial deve-  
39 lopments have occurred to the west on U. S. Highway  
40 #2, and the hospital and medical buildings and res-  
41 idential growth and development has occurred to the  
42 north.

43 6. The City of Kalispell in July, 1978, zoned a  
44 three acre parcel along the North side of Sunnyview  
45 Lane B-4 Commercial

46 The Court finds that the City of Kalispell did, in  
47 1978, zone a three-acre parcel of land on the north  
48 side of Sunnyview Lane B-4 commercial at the time  
49 the tract was annexed to the city; that at the time  
50 when the developer first proposed a subdivision, it  
51 was a 10-acre tract, of which the northern seven  
52 acres were to be comprised of apartments with the  
53 south three acres as a commercial site, which would  
54 be neighborhood service oriented and complement the  
55 hospital and medical offices.



1 7. The property proposed for zoning is bordered  
2 along its Western boundary by U.S. Highway No. 93,  
3 which is a four lane highway whose average daily  
4 traffic in 1978 was approximately 7151 vehicles acc-  
5 ording to data compiled by the Montana Department of  
6 Highways.

7 This Court finds this to be the fact, although U.S  
8 Highway #93 is a two-lane highway as it approaches  
9 the city from the north, and widens into a four-lane  
10 highway at about the north end of the Cameron tract,  
11 and continues as a four-lane highway southward  
12 through the City of Kalispell.

13 8. Because of highway traffic volume and recent  
14 development in the area, the property is less desir-  
15 able as a residential area than as a shopping mall  
16 site.

17 This Court finds that the uses adjacent to the Cameron  
18 tract are in conformance with zoning and, therefore,  
19 compatible with residential districts thereto, with  
20 the exception of a limited number of non-conforming  
21 uses; that 99 percent of the growth in this area has  
22 been residential or uses compatible with residential.

23 9. County residents indicate a desire and need for  
24 additional commercial retail space in the Kalispell  
25 area.

26 This Court finds that the City of Kalispell has in  
27 excess of 500 acres zoned for commercial use, much of  
28 which is not presently being put to a commercial use;  
29 that the areas zoned commercial constitute approxi-  
30 mately 21 percent of the city.

31 10. It is the expressed intent of the parties requ-  
32 esting the zone that a regional shopping mall be con-  
33 structed on the property.

34 This Court finds that parcel two of the Cameron tract  
35 is not intended to be used for a shopping mall, i.e.,  
36 a seven-acre tract to be zoned for unrestricted comm-  
37 ercial development; that notwithstanding the expresse  
38 intent of the petitioners requesting the zoning dis-  
39 trict, it will be a 52-acre tract, in addition to the  
40 seven-acre tract, zoned for unrestricted commercial  
41 use, and may be used accordingly, notwithstanding the  
42 intentions.

43 11. The proposed shopping mall will provide numerous  
44 jobs for local subcontractors and their employees,  
45 business for local materialmen, plus full time and  
46 part-time employment for numerous area residents in  
47 the completed mall.

48 This Court finds that no evidence was submitted to the  
49 Board of County Commissioners of contracts involving  
50 local subcontractors or local materialmen; that no  
51 evidence has been submitted by Developers Diversified  
52 to the County Commissioners or to the City/County  
53 Planning Board Staff that gives any estimate of the

1 type of or number of full time and part-time employ-  
2 ment which would be available to area residents when  
3 the mall was completed; that the market study done  
4 for Developers Diversified and furnished to the City/  
5 County Planning Board Staff did indicate that the  
6 sales potential of the shopping mall would come from  
7 three major areas, the first of which would be a  
8 transfer of sales from existing retail outlets, which  
9 included the moving of existing retail outlets to the  
10 mall, with no increase in employment.

11 This Court further finds that speculation with respect  
12 to employment, or actual employment, is not among the  
13 criteria for the determination of land-use zoning.

14 12. Development of the proposed mall will provide  
15 area consumers additional commercial retail space  
16 without them having to leave the area to satisfy their  
17 consumer needs.

18 This Court finds that assuming the foregoing findings  
19 to be correct, it would be equally as correct if the  
20 proposed mall were located in a commercially accept-  
21 able location in or around the City of Kalispell,  
22 and is not affected by locating the proposed mall in  
23 the middle of a residential area.

24 13. Development of the proposed shopping mall will  
25 significantly increase the tax base and tax revenue  
26 of Flathead County.

27 This Court finds that this finding would be equally  
28 true if the proposed shopping mall were placed in a  
29 commercially acceptable area, consistent with the  
30 comprehensive plan, in or around Kalispell, and that  
31 the corresponding increase in costs for city and  
32 county delivered services (e.g., police protection,  
fire protection, roadways, traffic control and sewer-  
age) would not be as great in areas previously  
zoned commercial, i.e., areas in which such develop-  
ment is already contemplated.

14. The developer of the proposed mall has stated  
that capital costs directly related to the mall will  
be borne by the developer. Improvements mandated by  
appropriate public agencies for the mall will also be  
borne by the developer.

This Court finds that no evidence, in writing, was  
submitted to the County Commissioners, by the terms  
of which the developers agreed to bear the capital  
costs directly related to the mall, e.g., traffic  
control devices, widening of roads, and storm sewer  
drainage.

15. Commercial development of the property with a  
shopping mall is compatible with neighborhood and area  
development and the demands of Flathead County Resi-  
dents. The surrounding development and use of prop-  
erty will aid in reducing the possibility of "leap-  
frog" or satellite commercial development of property  
near the proposed commercial zone.

1 This Court finds that commercial development of the  
2 property with, or without, a shopping mall is not  
3 compatible with neighborhood and area development;  
4 that the demands of Flathead County residents do not  
5 require that a shopping mall be placed in this loca-  
6 tion.

7 This Court further finds that the surrounding develop-  
8 ment and use of property is residential or compatible  
9 with residential, and that such a finding is tanta-  
10 mount to saying that spot zoning and unlimited comm-  
11 ercial district in the midst of residential develop-  
12 ment will prevent satellite commercial development  
13 because of the present use of the surrounding land  
14 by residences.

15 18. That the zoning regulations as applied to the  
16 proposed district are not in accordance with the Comprehen-  
17 sive Development Plan, nor in accordance with the proposed  
18 amendments, nor in accordance with the proposed amendments  
19 as approved by the City of Kalispell.

20 19. That the regional shopping center (or mall) en-  
21 visioned here is one designed to draw customers from both  
22 primary and secondary sources over a large region. In this  
23 instance, the primary customers would be persons from White-  
24 fish, Columbia Falls, Lakeside and the Kalispell area.  
25 Secondary customers would come from as far as Libby on the  
26 west, Canada on the north, Cut Bank on the east and Polson  
27 and Sanders County on the south. Presently, there are  
28 three commercial areas in Kalispell geared to the same  
29 customers, Westgate, K-Mart and the downtown area. B&B is  
30 in the general downtown area and is a shopping center. All  
31 of these are located some distance from the proposed mall  
32 and in opposite directions from each other, which would  
increase traffic and congestion by shoppers going back and  
forth between the various shopping centers and shopping  
areas and the proposed mall.

20. That the proposed use of the Cameron tract as a  
shopping mall is anticipated to attract 14,000 cars per  
day; that the traffic count at the Cameron tract will be

1 higher than at any other point in the City of Kalispell; that  
2 the traffic count at both Sunnyview Lane and Conway Drive  
3 will exceed 13,000 cars per day; that the traffic count on  
4 Sunnyview Lane at the intersection with U.S. Highway #93 in  
5 1976 was 2436, in 1977 was 2446; that with the completion  
6 of Conway Drive, the traffic count on Sunnyview Lane in  
7 1978 was 923; that there are presently 875 employees, in-  
8 patients, visitors, service vehicles, and emergency room  
9 patients per day at the hospital, averaging two trips per  
10 day; that there are 125 doctors and employees in the Kali-  
11 spell Medical Arts Building averaging four trips per day;  
12 that the daily traffic utilizing Sunnyview Lane and Conway  
13 Drive from U.S. Highway #93, into the hospital and the  
14 Kalispell Medical Arts Building is in excess of 3000 cars  
15 per day.

16 21. That fire protection to this area is provided  
17 presently by the West Valley Fire District; its requirement  
18 for fire protection is the same regardless of use.

19 22. That the health and welfare of the involved area  
20 will be affected if zoned as proposed in that the healthy  
21 surroundings of a predominate residential area will be re-  
22 placed by inundating commercial development. That should  
23 the tract not be included within the city limits of Kali-  
24 spell, the health and general welfare of the area will  
25 suffer in terms of water, sewer and storm drainage.

26 23. That adequate light and air will be provided  
27 whether the property is zoned in accordance with the com-  
28 prehensive plan or zoned B-4 commercial.

29 24. That the use proposed in the comprehensive plan  
30 as well as in the proposed shopping mall, or B-4 commercial,  
31 will prevent overcrowding of the land.

32 25. That the proposed use of the Cameron tract as a



1 shopping mall will create an undue concentration of popula-  
2 tion in an area designed to be predominantly residential;  
3 that it is designed to shift the shopping population from  
4 the central business district of the City of Kalispell to  
5 the Cameron tract; that the comprehensive plan is designed  
6 to avoid an undue concentration of population.

7       26. That the proposed use of the Cameron tract as a  
8 shopping mall will not facilitate the adequate provision of  
9 transportation, but it ought not to affect the adequate  
10 provision of water, sewerage (other than storm drainage),  
11 schools, parks, and other public requirements.

12       27. That the zoning regulations, as applied to this  
13 district, i.e., B-4 commercial, were not made with reason-  
14 able consideration to the character of the district and its  
15 peculiar suitability for particular uses, nor with a view  
16 to conserving the value of buildings surrounding it, nor  
17 with a view to encouraging the most appropriate use of land  
18 throughout the jurisdictional area.

19       28. That the zoning regulations, as applied to this  
20 district, are not compatible with the zoning ordinances of  
21 the City of Kalispell as applied within the jurisdictional  
22 area immediately surrounding the proposed Cameron tract  
23 district.

24       29. That the Board of County Commissioners did not  
25 address the criteria and guidelines for zoning regulations,  
26 as set forth in §76-2-203, MCA, in the consideration of the  
27 petition to zone the Cameron tract as B-4.

28       30. That Buffalo Hill is a hill on the northern edge  
29 of Kalispell that is approximately 100 feet higher than the  
30 surrounding land, extends for approximately a half mile  
31 north and south, and a mile east and west; that U.S. #93  
32 bisects the City of Kalispell, and proceeds up and over

1 Buffalo Hill; that the drive-in theater is located immedi-  
2 ately adjacent to U.S. 93 on the east, about two-thirds of  
3 the way up Buffalo Hill; that Meridian Drive intersects  
4 U.S. Highway #2 at the western edge of the City of Kali-  
5 spell, at right angles, and extends northward to intersect  
6 with U.S. Highway #93 at the southerly crest of Buffalo  
7 Hill; that the funeral home and crematorium is immediately  
8 west of U.S. Highway #93, on the flat summit of Buffalo  
9 Hill, at the southwest corner of the intersection of North-  
10 ridge Drive and Highway #93, approximately 400 yards north  
11 of the intersection of Meridian Road and Highway 93; that  
12 at the intersection of Meridian Road and Highway 93 is the  
13 floral shop; that proceeding from the floral shop south,  
14 on either Meridian Road or Highway 93, it is downhill,  
15 markedly so on Meridian Drive; that half way down the hill  
16 on Meridian Drive, immediately adjacent on the east, is  
17 the tire shop approximately 50 feet below the crest of  
18 Buffalo Hill; that approximately 100 yards further down  
19 Meridian Drive, immediately adjacent on the west, is the  
20 Pacific Power and Light Substation; that near the bottom  
21 of the hill, on Meridian Drive, on the east, is a resid-  
22 ence and separate garage, with the garage converted into a  
23 welding shop; that immediately south of the welding shop  
24 is the proposed Coca-Cola warehouse, and immediately south  
25 of that, at the intersection with Three Mile Drive, is the  
26 Circle K Store.

27 31. That the funeral home is architecturally designed  
28 to be compatible with the surrounding residential area, pre-  
29 existed the 1974 comprehensive plan, and the addition of  
30 the crematorium made no outward physical alteration of  
31 the home.

32 32. That the floral shop is architecturally designed



1 to be compatible with the surrounding residential area.

2 33. That the Pacific Power and Light Substation pre-  
3 existed the comprehensive plan, and is well below, and out  
4 of sight of, the flat summit of Buffalo Hill, and the sur-  
5 rounding residences.

6 34. That the gravel pit and concrete plant pre-  
7 existed the comprehensive plan, and was converted to a  
8 tire shop (which had to be an improvement), and is well  
9 below the level of the flat summit of Buffalo Hill, and  
10 out of sight.

11 35. That the welding shop, the Coca-Cola warehouse,  
12 and the Circle K Store are, topographically, at the base  
13 of Buffalo Hill, and are not really a part of the summit,  
14 or the surrounding area.

15 36. That the welding shop and the tire shop are non-  
16 conforming uses (although the latter may qualify as a  
17 neighborhood service station), and have been approved by  
18 no governing body.

19 37. That the building, in the proposed shopping mall,  
20 coupled with the asphalt parking area, will prevent ground  
21 absorption of storm water, and the storm drainage runoff  
22 will create an erosion problem en route to the Stillwater  
23 River, and a pollution problem at the Stillwater River.

24 38. That the Flathead County Comprehensive Zoning  
25 Regulations limit the size of a B-4 commercial area to ten  
26 acres; that the zoning regulations of the City of Kalispell  
27 similarly limited the size of a B-4 commercial area to ten  
28 acres, but that ordinance has been recently amended to  
29 provide that a B-4 commercial area shall not be less than  
30 five acres.

31 39. That the creation of a B-4 district that is  
32 intended to attract 14,000 cars daily, in the middle of a

1 residential district, will cause increased traffic on all  
2 of the roads immediately adjacent to the proposed district;  
3 that the Plaintiffs can anticipate increased traffic (and  
4 the concomitant dust and pollution), decreased salability  
5 of their residences, and decreased value of said residences.

6 40. The City of Kalispell has acquired extraterritorial  
7 jurisdiction in building code administration for the  
8 area at issue herein known as the Cameron tracts, through  
9 a grant thereof by the State of Montana, Department of  
10 Administration, Building Code Division, pursuant to Sec-  
11 tions 50-60-106 MCA.

12 41. That if the shopping mall is a permitted use, the  
13 City of Kalispell can reasonably anticipate increased  
14 costs in traffic control devices, widening of streets, and  
15 rerouting of main arterial traffic; that the shift in the  
16 commercial business district from the central business  
17 district of the City of Kalispell to the proposed regional  
18 mall will necessarily affect the taxable valuation of the  
19 central business district.

#### 20 CONCLUSIONS OF LAW

21 1. That the legislature of the State of Montana, in  
22 §76-1-102, MCA, specifically encouraged local units of  
23 government to improve the present health, safety, conveni-  
24 ence, and welfare of their citizens and to plan for the  
25 future development of their communities to the end that  
26 highway systems be carefully planned; that new community  
27 centers grow only with adequate highway, utility, health,  
28 educational, and recreational facilities; that residential  
29 areas provide healthy surroundings for family life; and  
30 that the growth of the community be commensurate with and  
31 promotive of the efficient and economic use of public funds.  
32

1           2. That accordingly, provision was made for the cre-  
2     ation of county planning boards and City/County planning  
3     boards, with master plans, and jurisdictional areas; that  
4     Flathead County had properly pursued this direction, with  
5     the creation of a county planning board, the adoption of a  
6     master plan, and the adoption of zoning regulations; that  
7     additionally, Flathead County and the City of Kalispell  
8     have created a City/County planning board, a jurisdictional  
9     area, and a master plan, or comprehensive plan, for the  
10    City/County jurisdictional area.

11           3. That for those governing bodies that have adopted  
12    a comprehensive development plan for jurisdictional areas,  
13    the Boards of County Commissioners are authorized to estab-  
14    lish zoning districts and adopt zoning regulations for all  
15    or parts of such jurisdictional areas, §76-2-201, MCA.

16           4. That the Board of County Commissioners of Flathead  
17    have not acted to implement comprehensive development plan,  
18    rather implemented an illegal program under resolution  
19    No. 291 wherein the owners of various tracts of land would  
20    petition the said board to leave that individual tract  
21    zoned. Treating the comprehensive plan as advisory only.  
22    Such was the treatment afforded by the said Board of the  
23    Cameron Tract. Further, the said procedure is illegal in  
24    that the only protest permitted is by the owners of the  
25    tract affected by the zoning, irregardless of any effect  
26    upon any other lands.

27           5. The action by the Flathead County Board of Comm-  
28    issioners in purporting to adopt a zoning classification  
29    within a portion of the territorial area of the Kalispell  
30    City-County Planning Board jurisdictional area contrary  
31    to the Comprehensive Plan as previously adopted by the  
32    City and the County, amounts to an amendment to the Com-

1 prehensive Plan taken unilaterally by Flathead County and  
2 without concurrence by the City of Kalispell. Such unila-  
3 teral action by the Flathead County Board of Commissioners  
4 is contrary to the form and spirit of the land use laws of  
5 the State of Montana relating to the planning and zoning  
6 of City-County jurisdictional areas.

7 6. That the designation of a 60-acre tract as a B-4  
8 commercial zone, in the middle of a residential area, con-  
9 stitutes spot zoning, was an abuse of discretion by the  
10 commissioners, and is contrary to law.

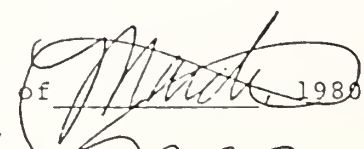
11 7. That the Buffalo Hill area is 99 percent resident-  
12 ial; that the limited non-residential uses in the area are  
13 either, by definition, compatible with residential use, or,  
14 in a very few cases, are a non-conforming use; that there  
15 is one small three-acre tract that has been zoned B-4 by  
16 the City of Kalispell, which is directly opposite from the  
17 hospital, which ought not to have been given such a zone  
18 designation, but the expressed intention of the developer  
19 at the time was to develop business uses that would com-  
20 plement the hospital. However, this small three-acre des-  
21 ignation, which is separated from the Cameron tract by res-  
22 idential-use property, is not sufficient grounds to estab-  
23 lish a 60-acre unlimited, commercial district.

24 8. That the zoning of the district is not in compli-  
25 ance with law, and, accordingly, the City of Kalispell  
26 ought not to issue a building permit, and any such build-  
27 ing permit would be void ab initio.

28 9. That the Public Service Commission has been made  
29 a party defendant in this case for informational purposes  
30 only, according to the complaint, and no relief is sought  
31 against them.

32 DATED this 14 day of March, 1980.

*Counsel for Plaintiff shall*

  
ROBERT M. HOLTER, DISTRICT JUDGE

1  
2  
3 MEMORANDUM

4 Where applicable, the following observations are to  
5 be deemed a part of the Court's Findings of Fact and Con-  
6 clusions of Law set forth foregoing.

7 This case arose because of the policy of the County  
8 Commissioners of Flathead County not zoning a tract of  
9 land until the owners of that tract petitioned the Comm-  
10 issioners to do so. (Resolution 291) Protest then is  
11 limited to the owners of the tract involved. Not only  
12 does this policy violate the law but it offends the basic  
13 concepts of fair play. Certainly, each person that the  
14 zoning affects ought to have some right to protest, not  
15 just the particular owners. The type of zoning here has  
16 been condemned as piecemeal zoning and should be struck  
17 down.

18 82 AM JUR 2nd page 513:

19 "Piecemeal zoning" refers to a situation  
20 in which the zoning authority, in enacting an  
21 original ordinance, does not regulate the en-  
22 tire area within its jurisdiction. Thus, a  
23 zoning ordinance which establishes districts  
24 and regulates land uses in part, but not all,  
25 of the territory of a municipality, is some-  
26 times referred to as a partial or "Piecemeal"  
27 zoning ordinance. The requirement that zon-  
28 ing be in accordance with a comprehensive  
29 plan has been deemed to be a provision again-  
30 st piecemeal zoning, and, consistantly with  
31 the view that the requirement of a compre-  
32 hensive plan is complied with only if the  
entire territory of a municipality is zoned,  
it has generally been held by most Courts,  
that piecemeal zoning is invalid. There are,  
however, some zoning ordinances which have  
been upheld notwithstanding that they did  
not embrace the entire community, or did not  
contain comprehensive plans for the zoning  
and developement of the whole municipality,  
but in terms referred to a particular district  
only.

31 And in addition to what is said in the foregoing,  
32 the action of the County Commissioners (or should we say



1 inaction) is the most flagrant invitation to spot zoning  
2 that one could come across. Without regard to any of the  
3 effort put into the comprehensive plan, the Commissioners  
4 simply refused to consider any zoning except upon applica-  
5 tion.

6 In Cassel v Mayor and City Council of Baltimore  
7 (1950) 195 Md 348, 73 A 2d 486, the Court stated:

8 "Spot zoning", the arbitrary and unreason-  
9 able devotion of a small area within a zoning  
10 district to a use which is inconsistent with the  
11 use to which the rest of the district is restric-  
12 ted, has appeared in many cities in America as  
13 the result of pressure put upon Councilmen to  
14 pass amendments to zoning ordinances solely for  
15 the benefit of private interests. While the  
16 City Council has wide discretion in inacting  
17 zoning ordinances, it has no authority to place  
18 restrictions on one persons property and by mere  
19 favor remove such restrictions from anothers pro-  
20 perty, unless there is reasonable ground for the  
21 discrimination. Moreover, increase in "Spot zon-  
22 ing" in course of time would subvert the original  
23 soundness of the comprehensive plan and tend to  
24 produce conditions almost as chaotic as existed  
25 before zoning. It is, therefore, universally  
26 held that a "Spot zoning" ordinance, which sing-  
27 les out a parcel of land within the limits of a  
28 use district and marks it off into a separate  
29 district for the benefit of the owner, thereby  
30 permitting a use of that parcel inconsistent with  
31 the use permitted in the rest of the district, is  
32 invalid if it is not in accordance with the com-  
prehensive zoning plan and is merely for private  
gain. On the other hand, it has been decided  
that a use permitted in a small area, which is  
not inconsistent with the use to which the larger  
surrounding area is restricted, although it may  
be different from that use, is not "Spot zoning"  
when it does not conflict with the comprehensive  
plan but is in with harmony with an orderly growth  
of a new use for property in the locality. The  
Courts have accordingly upheld the creation of  
small districts within a residential district for  
use of grocery stores, drug stores, and barber  
shops, and even gasoline filling stations, for  
the accommodation and convenience of the resid-  
ence of the residential district."

28 One brief comment in regard to finding No. 27 and re-  
29 lated findings. The Buffalo Hills area is somewhat higher  
30 in elevation than the surrounding city. Whatever is built  
31 there will be visible from most areas of the city. It  
32 will represent a "Commercial Acropolis" to the entire



1 Flathead community.

2 Addressing now the plea that "Everybodys doing it",  
3 which the County Commissioners and the developer advance  
4 as an argument that the City and County had previously  
5 permitted variances or zone changes, therefore this one  
6 should be granted. Such evidence and such arguments are  
7 irrelevant as is any plea of discrimination.

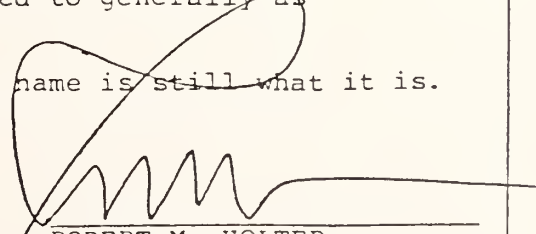
8  
9 In State ex rel Miller v Cain (1952) 40 Wash  
2d 216, 242 p2d 505:

10 where the realtor, who had been refused  
11 a permit to extend the non-conforming use of  
12 her property for a gasoline station, conten-  
13 ded that she was being discriminated against,  
14 since a lot across the street from her prop-  
15 erty had been rezoned for business purposes  
16 so as to permit the erection of a gasoline  
17 station there, the Court pointed out that  
18 when a "Spot rezoning" is a fait accompli,  
19 it does not justify additional "Spot rezoning"  
for the benefit of other property owners who  
may consider themselves to be similarly situ-  
ated, and that it had quite uniformly been  
held that permitting some persons to violate  
the zoning regulations did not perclude their  
enforcement against others. This rational  
was followed in Wisconsin in Rowland v Racine  
(1937) 223 WIS 488, 271 NW 36.

20 The argument that the label accorded the product of  
21 the planners has significance to its legal import is best  
22 answered in 82 AM JUR 2nd 501:

23 The standard state zoning and enabling act  
24 provides that zoning regulations "Shall be  
25 made in accordance with a comprehensive plan"  
26 and the enabling legislation of a majority  
27 of states includes this requirement or some  
28 variant thereof. This kind of plan may be  
called a comprehensive plan, a comprehensive  
development plan, or a master plan, but in  
the interest of uniformity of terminology  
herein it will be referred to generally as  
a "Comprehensive Plan"

29 Thus a rose by any other name is still what it is.

30  
31  
32  
  
ROBERT M. HOLTER  
District Judge





